

Case number:
NAIH/2017/148/98/H
(NAIH/2016/6544/H)

Subject : The data processing of the
Church Scientology in Hungary
and its Central Organization

DECISION

[Translator's note: The translation is based on the Hungarian-language material from the Church of Scientology in Hungary, though it did use original English material where available for guidance. In the text, [...] means the usual omission of unnecessary material but also, more frequently, anonymised data, and data means personal data.]

The National Authority for Data Protection and Freedom of Information (hereinafter the Authority) hereby makes the following decision under Section 61 (1) a), c), d), e) and g) of Act CXII of 2011 on the Right of Informational Self-determination and on Freedom of Information (hereinafter the Privacy Act) in the case concerning the **Church of Scientology in Hungary** (hereinafter Data Controller I or CSH—1138 Budapest, Váci út 169) and the **Central Organization of the Church of Scientology** in Hungary (hereinafter Data Controller II or CSH Central Organization—1138 Budapest, Váci út 169) with the number above; where findings concern both organizations, the Decision uses the term the Data Controllers or the Church.

- 1) The Authority has found that both the Data Controllers **pursue unlawful processing of personal data** because, as adduced in the Reasons for the Decision, they breached their obligation to provide prior information, the principles of purpose limitation and fairness in data processing, they failed to meet the data security requirement, and also pursue data processing without appropriate legal basis.

The Authority hereby **prohibits the Data Controllers from unlawful data processing**, and requires them both to comply with this within 30 days of the delivery of this Decision in the following way:

- a) due to their breach of the requirement of providing prior information, they shall modify their practice to comply with the regulations of the Privacy Act in order to provide their data subjects appropriate information on the purpose of their data collecting and data processing, on the identity of the data controller, as well as on other activities related to data processing when recording data subjects' personal data and in the statements of consent and the forms they use;

- b) they shall inform their staff members, the users of their services, their believers about the way personal data processing has changed, and they shall request all data subjects to consent or reaffirm their consent to data processing with the modified text of information on data processing having been previously presented to the Authority;
- c) in the lack of consent to data processing with each purpose affirmed, they shall ensure the documented erasure of the data of the data subject;
- d) ensuring further unrecongnizability, they shall erase or destroy all the personal data collected without appropriate purpose and legal basis from third parties not qualifying as staff members, from employment applicants and from believers;
- e) they shall desist from any future data collection from third parties;
- f) they shall terminate the transfer of data to third countries as per point IV.4.7, and they shall comply with data security requirements in respect of the transfer of personal data to other countries.

Within 30 days of the expiry of the deadline for filing a petition for judicial review, the Data Controllers shall without delay notify the Authority of the measures taken. They shall attach to the notification records fully documenting the fact and circumstances of erasures as well as statements concerning the erasure of all counterparts and copies of the data mentioned.

The Authority calls the attention of the Data Controllers to the fact that, under Section 61 (1) of the Privacy Act, the data involved in the disputed data processing may not be erased and may not be destroyed before the expiry of the deadline for filing a petition for judicial review, and, if judicial review has been requested, before the final court decision.

- 2) The Authority has found that **Data Controller II pursues unlawful data processing**, because, as per the reasons adduced, it uses unauthorised person and property protection cameras breaching the requirement of providing prior information, the principles of purpose limitation in data processing, and also processes data without appropriate legal basis.

The Authority **prohibits Data Controller II from further unlawful data processing**, and calls on Data Controller II to comply with this within 30 days of the issue of this Decision in the following way:

- a) due to its breach of the requirement of preliminary provision of information, it shall change its provision of data processing information practice to comply with the regulations of the Privacy Act so as to provide appropriate information to the data subjects;
- b) it shall inform data subjects about the way data processing has changed having previously presented the modified text of information on data processing to the Authority;
- c) it shall desist from the surveillance of public grounds as well as the surveillance and recording of happenings in the areas monitored without purpose.

Within 30 days of the expiry of the deadline for filing a petition for judicial review, Data Controller II shall without delay notify the Authority of the measures taken.

- 3) Simultaneously, the Authority imposes a data protection penalty of
HUF 20 000 000, i.e. twenty million forints,
on Data Controller I
and a further data protection penalty of
HUF 20 000 000, i.e. twenty million forints,
on Data Controller II.

The Authority furthermore obligates the Data Controllers together to pay as procedural cost HUF 753,677, i.e. seven hundred and fifty three thousand six hundred and seventy seven forints in expert fees. The sum of the procedural fee shall be debited to bank account number 10032000-00319425-00000000 including the reference: 'NAIH/2017/148/H. KÖLT'.

The Data Controllers shall comply with their obligations to pay the procedural cost and the data protection penalty within 15 days of the date of delivery of this Decision. The penalties shall be debited to the centralized revenue collection bank account of the Authority (10032000-01040425-00000000; the IBAN code of the centralized revenue collection account is: HU83 1003 2000 0104 0425 0000 0000). The debits shall be made with the reference: 'NAIH/2017/148/H. BÍRS.'

The Authority also calls attention of the Data Controllers that, in the event of non-payment of the penalties and the procedural costs, the amounts imposed are subject to late payment penalty, the rate of which shall be 1/365 of double the current central bank base rate. In case of non-payment of penalties, procedural costs and late payment penalty, the Authority shall order the enforcement of the Decision. The penalties and late payment penalties shall be collected as taxes by the National Tax and Customs Authority.

- 4) In addition to the above, the Authority orders the Decision to be made public on the Authority's website with the identification data of the Data Collectors.
- 5) The Authority rejects application of Data Collector I to terminate its legal status as party.
- 6) The Authority rejects the request of Data Collector II for the anonymisation of 'Donor Forms'.

This Decision shall not be subject to administrative remedy, however, within 30 days of its delivery, its judicial review may be requested by way of a petition addressed to the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest-Capital Administrative and Labour Court) but filed electronically with the Authority. The request for a hearing shall be indicated in the petition. For those not granted full exemption from duties, the fee for the judicial review procedure shall be HUF 30,000, and the right to suspend the payment of duties shall also apply to the trial.

Reasons for the Decision

- (1) Both the Data Protection Commissioner and the Authority have examined the data processing of the Church of Scientology in Hungary on several occasions. In the course of these, the Data Protection Commissioner and the Authority, upon complaints by data subjects, examined the use of the 'religious artefact', the 'E-meter', by the Church, the processing of employees' data, certain forms used for enrolling to the Church as regards the collected data and information provided in them, the processing of minors' personal data, and the granting of requests for erasure.
- (2) **The Steps of the Proceedings:**
- (3) **1. Complaints:**
- (4) Prior to the administrative proceedings, two complaints were filed with the Authority, in which the complainants objected to the data processing practices of the Church of Scientology in Hungary (hereinafter CSH), the Central Organization of the Church of Scientology (hereinafter referred to as 'CSH Central Organization'), and the CSH Rural Missions.
- (5) One complaint was that the complainant having been a Scientologist for years and deciding later to leave asked to be provided documents about himself, his life, and close relations, but his request was not granted. In addition, he also reported fears that if he broke up with the organization, these highly sensitive pieces of information recorded in writing could be used against him.
- (6) In the other complaint, whereupon the administrative proceedings commenced, the complainant informed the Authority that he had contacted various organizations in the Church of Scientology requesting information on his personal data but did not receive a genuine reply.
- (7) The contents of the complaints suggested unlawful processing of personal data, and it was also deemed probable that the unlawful processing of personal data concerned a wide range of people and special data, therefore, pursuant to Section 60 (4) of the Privacy Act, the Authority *ex officio* opened administrative proceedings for data protection on the 5th of December, 2016.
- (8) **2.** In order to clarify the facts of the case, the Authority considered it appropriate to conduct an on-site inspection, which took place on 7 December 2016. The Authority ordered the inspection of the premises without prior notification of the CSH and CSH Central Organization, as prior notification would have jeopardized the success of the inspection.
- (9) During the on-site inspection, the Authority seized all documents and electronic media of the CSH and CSH Central Organization containing personal data and special data.
- (10) Taking into account the fact that, for a well-founded decision, the Authority had to get acquainted with the electronically processed records of the CSH and CSH Central Organization, it appointed a forensic informatics expert to conduct an examination. The

expert was responsible for searching, copying/sampling data, examining databases, records, and making copies.

- (11) At the Authority's request, representatives of the Church presented their data processing, mentioning 'Mailing Files' in which correspondence with believers is stored, 'PC Folders', to which only ministers and case supervisors have access, and in which information about believers' own life is recorded, as well as Ethics files that are about acts of believers that are unethical or incompatible with the Code of Ethics of the Church. By their account, they keep, apart from those mentioned, folders on study, staff and financial matters. In answer to Authority's question, they stated that they kept documents for about 25 years.
- (12) According to their statement, the files are sorted in alphabetical order and kept in repositories. Electronically, they record chiefly contact information, information on the courses taken by believers, and an address book, which can be regarded as a kind of registry of members.
- (13) In answer to the Authority's question, it was stated that the complainant had no folder they process, all they had was a mailing file, which was given to him upon request. In addition, they possessed a few declarations, correspondence from around a 1996 and some performance certificates, which the complainant received copies of.
- (14) In the opinion of the legal representative of the CSH and CSH Central Organization, the Authority's proceeding was illegal, and, by the seizure of believers' files, the Authority has violated their right to religious freedom.
- (15) The Authority further notes that a member of the Church, with no appropriate legal basis for doing so, took pictures of the persons who had been conducting the inspection of the premises as they were leaving.
- (16) **3.** In order to clarify the facts of the case, the Authority considered it necessary to carry out another on-site inspection, which took place on 22 December 2016. The Authority ordered the on-site inspection without prior notification of the CSH and CSH Central Organization, as prior notification would have jeopardized the success of the inspection. The Authority appointed the forensic informatics expert to examine the records processed by the Data Controllers again because he had been granted access to the system as a guest user at the previous inspection, so a full examination of the databases had not been possible.
- (17) The expert could examine two laptops presented by the CSH Central Organization, and made copies of the data thereon. According to their statement, the person responsible for information technology (administrator) had been on leave, so they could not provide other access to their information technology system.
- (18) The team leader of the on-site inspection requested the representatives of the CSH and CSH Central Organization to provide access to their systems and databases to the informatics and forensic expert.
- (19) Taking into account the fact that the legal representative, in spite of several warnings of the legal consequences of his conduct hindering the inspection, refused to

- provide access to the data processing system/data files of CSH Central Organization, the Authority imposed on him a procedural penalty of HUF 500 000 during the inspection.
- (20) Following the inspection, the Authority issued orders and applications for internal legal assistance in order to clarify the facts of the case. On the basis of the received reply letters, the Authority found that the CSH Central Organization was responsible for hindering the examination, and has thus imposed a procedural penalty on it, and withdrew the procedural penalty imposed on the legal representative.
- (21) According to the simplified report for the period from 1 January 2015 to 31 December 2015 published on 9 August 2016 of the list of civil society organizations the National Office for the Judiciary keeps, the pre-tax profit of the CSH Central Organization, as well as its retained earnings, was: HUF 1 036 106 000, that is HUF one billion, thirty-six million, one hundred six thousand.
- (22) In view of the fact that the pre-tax profit and retained earnings of the CSH Central Organization exceeded the amount of penalty imposable on a legal entity a thousandfold, the Authority determined a penalty of HUF 500 000 by calculating it at the mean, i.e. fifty percent of the maximum penalty.
- (23) The legal representative of the CSH Central Organization filed a request for review with the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest-Capital Administrative and Labour Court—hereinafter the Court) on 12 May 2017 because of the procedural penalty and also to suspend the execution of the order until the Court made its decision. In its ruling dated 30 May 2017, the Court rejected petition for review without deliberating its merits.
- (24) On 13 July 2017, the CSH Central Organization re-submitted its petition for review.
- (25) **4** The Legal Representative of the CSH and CSH Central Organization filed a petition for review dated 23 December 2016 that the Court should annul the order of the Authority numbered NAIH / 2016/6544/5/ H whereby the Authority seized all documents and electronic media of the CSH and CSH Central Organization containing personal and special data. In its ruling of 11 May 2017, the Court rejected the petition for review.
- (26) The Authority made its decision on determining and advancing the expert's fees for the tasks. The legal representative of the CSH and CSH Central Organization filed a petition with the Court against the order. In its ruling dated 30 May 2017, the Court rejected the petition for review without deliberating its merits.
- (27) On 13 July 2017, the CSH Central Organization re-submitted its petition for review.
- (28) **5** In its letter dated 20 January 2017, the CSH Central Organization made the following declaration:
- (29) *'Scientology believes that man is an immortal spiritual being who has lived many lives and who has the opportunity for endless life.'* One of the fundamental doctrines of the religion is that spiritual freedom can only be achieved if one follows the multi-level path set out in the Scriptures, which Scientologists call the 'Bridge'.

- (30) The core of their religious services is training and auditing. Auditing is done by an auditor, a minister of the Church of Scientology. Auditing is carried out by an auditor with a believer ('preclear')¹ in a confidential, eye-to-eye meeting. In the course of this, he uses different procedures, which are a series of questions and instructions, and are precisely indicated in the so-called *Auditor's Code*, and auditing is supported by a 'religious artefact', the E-meter. This is to 'locate areas of spiritual distress or travail'. The *Auditor's Code* requires that a minister [auditor] never 'use the secrets of a preclear divulged in session'. The auditor takes down notes during the session, which are then put in the preclear file, also known as the PC Folder. In the Church of Scientology, the PC Folder is a religious document, and, apart from the auditor, only the 'case supervisor' can access them, who oversees the fixed order of auditing sessions.
- (31) They believe that the communication between auditor and preclear allows the latter to develop spiritually. 'Preclear relieved of the pain and injury of past events by recollection and communication [...] thereby improving his ability to survive and achieve higher levels of spirituality'.
- (32) According to the teachings of Scientology, records made at audit sessions must be kept so that the believers can be helped on the road to spiritual freedom.
- (33) The representative of the CSH Central Organization outlined the folders kept electronically and on paper and their content. Accordingly, the following are kept electronically:
- a) The folder called Central File (also known as CF Folders), which is a follow-up programme containing the name, address and the individual code of the CF Folder.
 - b) The INCOMM Accounting and Address Book (also known as Addresso) programme, containing names, addresses, and contact information. The system also contains notes on the religious services believers participated in, the religious publications they bought, the payments and donations they made.
 - c) Images recorded by security cameras are automatically deleted after 30 days.
 - d) List of staff members
 - e) Online Oxford Capacity Analysis (OCA) tests.
 - f) Case supervisors may request video recordings of certain sessions held by minister trainees, which are important for the correction of ministers.
- (34) According to the statement of the representative of the CSH Central Organization, the following paper-based folders are kept:
- a) CF Folders, also known as mailing files, containing correspondence with believers and the public, telephone records, e-mail exchanges, certificates of services made use of, receipts of payments. The purpose of the data processing is to show the maintenance of contact with believers.
 - b) PC Folders which document the preclear's path to spiritual freedom as described above. They contain notes written by the data subject, the minister, or the case

¹ 'Preclear' is a believer who has not reached the 'Clear' level on the Bridge. 'Clear' level is a relatively high level, so most of the believers who are on the way to the 'Clear' level are referred to as 'preclears'.

supervisor. According to the statement of the representative of the CSH Central Organization the folder is fully in accordance with Recital 27 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter the Directive), because it is an unstructured file not including or linking to any system allowing personal or special data to be easily accessed.

- c) Ethics Folders, which are aimed at helping the data subject return to honesty and uprightness, be able to progress towards total spiritual freedom with the help of ethics treatments which are based on various documents processing ethics and judicial actions. The folders may include reports on a believer or a staff member, records and results of ethics and judicial procedures taken in respect of a person, as well as various praises of him or her. The seal of confession applies to the contents of the Files, because the data subject shares ethical and moral information, and reveals his or her sins, which is a kind of confessional process. The files are accessible only to the persons conducting ethics procedures and case supervisors.

Contrary to the PC Folders, these folders can be accessed by believers with the help of ethics staff, and, in certain cases, they may request full 'clearing' of the file.

Like PC Folders, Ethics Folders are not kept electronically, and it was emphasized that these qualify as unstructured data files.

- d) Staff Member Folders include employee agreements, qualification forms, notes, interviews, tests, which are sometimes collected and systematized for promotion and relocation.

According to their statement, it can be stated that these files qualify as unstructured data files.

- e) Valuable documents (also known as VAL DOC) include copies of employee agreements, enrolment forms, other forms signed by believers, most of which contain data protection information and statements of consent.

- f) Student Folders contain the materials concerning training courses staff members and believers have taken, including names, addresses, telephone numbers, and invoices. According to their opinion, it can be stated that these files qualify as unstructured data files.

- g) Financial documents are also kept, including balance sheets, invoices, receipts, donation documents.

(35) According to their statement, the processing of personal data (name, address) of members and senior officers complies with Act CLXXXI of 2011 on the Court Registration of Civil Society Organizations and Related Rules of Proceeding.

(36) In answer to the Authority's question of how information is communicated to data subjects on data processing activity, the representative of the CSH Central Organization stated that *'before the beginning of religious services, where specific data are collected, every new person signs various enrolment forms, one of which surely contains a kind of data protection notice and statements of consent'*. But initially, those interested are

shown the video entitled *Orientation* so as to be acquainted with what the organization does. The representative called the following the most important among the aforementioned enrolment forms and statements of consent:

- a) Participants of introductory seminars or courses are requested to fill in the *Introductory Scientology Courses Application Form, Agreement and General Release Declaration*, which includes a data protection notice, by signing it, the data subjects consent to the data processing. It is at this point that Student and CF Folders are made for them.
- b) Participants of introductory auditing sessions are requested to sign the '*Basic Scientology Services Application Form, Agreement and General Release Declaration*' and the '*Confidential Religious Folder Agreement*'. The first includes a data protection notice, while the second form is mainly about data protection, and thereby written consent is given by the data subjects in this case as well. It is on this basis that their PC, Ethics, Student and CF folders are created.

If two believers wish to audit each other, they are requested to sign the '*Hubbard Dianetics Seminar—Co-Auditing and Book One Auditing Application Form, Application Form, Agreement and General Release Declaration*', which also includes a data protection notice and a statement of consent.

- c) The 'Bridge' mentioned above includes a special step, the Detoxification Programme. This is to purify the body physically, but it requires that the participant be in the right physical condition, he must therefore undergo a *medical* examination beforehand, and the physician must certify his or her fitness. Participants must fill in three forms: '*Medical Examination for Detoxification Programme and Physician's authorization to participate in it*', '*Religious Services Application Form, Agreement and General Release Declaration*' and '*Confidential Religious Folder Agreement*'. All three forms include data protection notices and statements of consent, on the basis of which records of the medical examination are kept. Based on these, PC, Ethics, and CF Folders may be prepared.
 - d) Participants of main services are requested to sign '*Religious Services Application Form, Agreement and General Release Declaration*' and '*Confidential Religious Folder Agreements*'.
 - e) Staff members are also informed about the processing of their personal data in the agreements made with them and on forms relating to the disclosure of information to the offices; they are also informed on the processing of data about qualifications.
- (37) In response to the question by the Authority, the representative of the CSH Central Organization stated that the data of believers are stored until the date of the withdrawal of the data protection statement or until the granting of the request erasure. Data subjects may request in writing information about the processing of their data, and also request their correction and erasure.
- (38) **6** The forensic informatics expert delivered his opinion on his observations made at the on-site inspection conducted on 7 and 22 December 2016.

- (39) Presented at the inspection held on 7 December 2016, the software called Parishioner Contact and Information 2.5.4 operates the Addresso system. Starting the software needs logging in to a server via a remote desktop connection, from where the application can be started, and the connection is through a virtual private network. There was no information available to the expert in the public Internet database as to where the application server was located. Scientology.net has an American IP address, but it has not been possible to establish the location of the subdomains of this server. The expert found no data recording function in the programme, which was merely a querying interface, so he found no data as to what the sources of the data stored in data files are. The creation dates of data files vary, in several instances, there are data entered in 1994, but, as the last modification date, 2016 also appears for the same person; it can therefore be stated that new data are continuously recorded in the system.
- (40) The expert made screenshots of the programme menu and searches in the application. He found that the number of all natural persons processed in the system was 76,363. The data on the data subjects were the following: name, IAS membership², Addresso ID, e-mail address, address, phone number, date of birth, language knowledge, gender, marital status, progress on 'Bridge', purchases, courses taken, and donations.
- (41) During the on-site inspection held on 22 December 2016, the expert examined the two laptops supplied by the Data Controllers, but did not find any data files containing personal data.
- (42) The expert examined the camera system in the building. He found that the system is served by a server application installed on a server and a client application accessible from one or more workstations.
- (43) The system can record images from 30 cameras, 28 of which operated during the inspection. Of these, images recorded by 5 cameras were exported by the expert during the on-site inspection held on 7 December 2016.
- (44) The expert also examined the computer in the central registry, on which the application called CFTracker ran. This included entries on 76,512 persons, the data for each natural person being as follows: name, address and date, but, in the randomly opened screens, the address fields were not filled in.
- (45) **7** In his letter dated 24 April 2017, the legal representative of the CSH and CSH Central Organization informed the Authority, in answer to its query seeking to clarify further facts of the case, of the following:
- (46) In their opinion, the Church of Scientology in Hungary does not perform any data controlling activity, and therefore requested the termination of the proceedings against it.
- (47) **7.1** In their view, the several of the actions in the proceedings and the wording of the requests sent to them by the Authority indicate that the President of the Authority is

² IAS is the abbreviation of International Association of Scientologists, the official membership organization of Scientology.

biased, and therefore, in accordance with the provisions of Section 42 (3) of the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter the Proceedings Act), they requested that he be deemed biased and that the necessary measures for his exclusion be taken.

- (48) **7.2** They repeatedly stated that, in their view, the scope of the Privacy Act does not extend to data processing related to the religious activity of the CSH Central Organization, because the data provided by believers are stored exclusively in paper-based format, exclusively in folders that are not part of a unified filing system (nor are they stored for the purpose of creating a unified filing system), they are therefore unstructured; it is not possible, based on any single principle, to search folders or the documents or data contained in the folders. The folders are arranged solely by name. The name of the believer is on the cover of the folder, and the cover is for the sole purpose of identifying the folder.
- (49) In order to corroborate their statements, they referred to Article 3³ and Recital 27⁴ of the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as well as Article 2⁵ of Regulation 2016/679 repealing the Directive.
- (50) According to their opinion, therefore, the scope of the data protection Directive does not extend to the activities referred to and examined by the Authority. The fact that Hungarian law 'keeps silent' about Article 3 of the Directive does not mean that the Hungarian data protection law is not part of the provision. The Directive has direct effect in Hungary—as the Authority itself laid it down in countless decisions. In their opinion, thus, the Authority is obliged to restrict its examination to the data processing subject to the regulation, namely the electronic data processing the CSH Central Organization carries out.
- (51) **7.3** By reference to the temporal effect of the Privacy Act, they reasoned that, pursuant to Section 73 thereof, the Authority cannot examine data processing activities before 1 January 2012, i.e. before the Act entered into force, these fall outside the scope of the Act.

³ Article 3 (1) of the Directive states: 'This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.'

⁴ Recital 27 of the Directive states: 'Whereas the protection of individuals must apply as much to automatic processing of data as to manual processing; whereas the scope of this protection must not in effect depend on the techniques used, otherwise this would create a serious risk of circumvention; whereas, nonetheless, as regards manual processing, this Directive covers only filing systems, not unstructured files; whereas, in particular, the content of a filing system must be structured according to specific criteria relating to individuals allowing easy access to the personal data; whereas, in line with the definition in Article 2 (c), the different criteria for determining the constituents of a structured set of personal data, and the different criteria governing access to such a set, may be laid down by each Member State; whereas files or sets of files as well as their cover pages, which are not structured according to specific criteria, shall under no circumstances fall within the scope of this Directive'.

⁵ Article 2 (1) of the Regulation states: 'This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.'

- (52) **7.4** The Data Controllers also drew attention to the fact that there can be no discrimination between churches, that all churches are equal in terms of freedom of religion or freedom of religious practice, as no church can discriminate against worldview convictions on grounds of value.
- (53) Reference was also made to Constitutional Court Decision 4/1993 (II.12) AB, emphasizing that the Constitutional Court's continued and consistent practice requires that the traditional content of religious freedom be interpreted in an extended way, including freedom of conviction, freedom of religious practice, freedom to omit expression of conviction, etc.). According to the statement, the special activities of the Church of Scientology, including auditing and ethics procedures, fall within the scope of the freedom of conscience and religion. These procedures are based on the internal rules of the Church, and arise from religious conviction. The Authority cannot therefore investigate and restrict the exercise of the freedom of conscience and religion, cannot establish rules in this respect, and cannot interfere with the auditing and ethics procedures.
- (54) By reference to Sections 5 (1) and 6 (4) of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (hereinafter FCR Act), the legal representative drew the conclusion that the Authority can only examine the data processing of the CSH Central Organization that is not related to church activity.
- (55) The Church refers to the basic principle of the separation of state and church, citing Articles I and VII of the Fundamental Law, and, further, pointed out that, on the basis of Section 1 (4) of the FCR Act, the right to freedom of conscience and religion can only be limited for the purposes set forth in Article I (3) of the Fundamental Law. It also referred to Section 8 (2) of the FCR Act, as well Section 9 (2) Act XXXI of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms of Rome of 4 November 1950 and the Eight Additional Protocols thereto.
- (56) Furthermore, it was complained that the Authority's proceedings did not take into account the fundamental right (freedom of religion) of the Church of Scientology or the individual believers described above, and the restriction of a fundamental right for the sake of another fundamental right is possible only with due respect for the essential content of the fundamental right. By virtue of seizing the documents necessary for the practice of their religion, the Authority makes it impossible for them to practice their religion, and is therefore in breach of the Fundamental Law. Section 19 (1) of the FCR Act was also referred to, according to which the religious community operates as per their internal rules, own principles of faith and rites, and consequently state organs have no right to interfere in the internal rules and principles of faith of churches.
- (57) By reference to Constitutional Court Decision 30/1992. (V.26.) AB, it was argued that the constitutional value of religious freedom is higher than that of data protection. Restrictions on communication rights may be justified in order to enforce other fundamental rights, but the state's obligation to protect institutions is less important.

The activity carried out by the Authority falls within the scope of the state's obligation to protect institutions, which is legitimate insofar as the personal rights of the people intended to be protected are not violated. The Authority disregarded all this when the believers expressly objected to the activity of the Authority, since they were effectively deprived of the possibility to practice religion, as it is impossible to do so without the documents seized by the Authority.

- (58) **7.5** The Authority addressed a number of questions to the Data Controllers about the organization of the Church in order to get acquainted with data controller tasks and to link them to the organization or organizational units. The statement of the Church contained only general statements, or provided elusive replies to the Authority.
- (59) According to the replies received, the bylaws of the association contain the requested information. According to their statement, the Church of Scientology assumed the form of a religious organization, unifies and aligns a multitude of diverse religious activities, including not only ministering Scientology religious services and practices, but proselytization, ecclesiastical management, relay of communication, production of dissemination materials and many other functions. At the lower levels of this hierarchy are individual field ministers, Scientology religious groups and Church missions involved in ministering beginning auditing and training. At the upper level are larger Church organizations that minister the advanced levels of auditing and training religious services.
- (60) 'Class V Churches' minister beginning and intermediate religious services, and have the authority to train and ordain ministers. These Churches are fully responsible for all Scientology activities in their respective zones, and are much larger than field groups and missions.
- (61) Within the hierarchy of the Church of Scientology, there is a network of Continental Liaison Offices responsible for coordinating Scientology activities on regional and local levels. These offices serve to support the actions of local Churches, missions and groups. Such offices are maintained in Toronto for Canada; Copenhagen for Europe; New York City for the Eastern United States; Los Angeles for the Western United States, and at Saint Hill Manor in Sussex, England, for the United Kingdom.
- (62) Church of Scientology International (CSI), the mother Church of the Scientology religion, is headquartered in Los Angeles, California. CSI oversees the ecclesiastical activities of all Scientology Churches, organizations and groups world over and ensures that individual Churches receive guidance in their ministries. CSI also provides the broad planning and direction needed to support the Church's international growth.
- (63) According to their statement, each Scientology Church is a separately registered organization, and each is governed by its own management body. In accordance with the Civil Code, the association may contain provisions for conferring (derivative) legal personality upon certain of its organizational units. Pursuant to the provisions of Section 3:32 of the Civil Code, the Church created several derivative legal persons as described in the articles of incorporation of the association.

- (64) The Authority addressed a number of questions to the Church regarding the details of the services they provide (e.g. auditing). According to the legal representative, the common denominator of all their services is that the believer is free to speak to his auditor because he knows that someone is listening to him, and whatever he says is treated strictly as a secret of the confessional. The auditor only makes record of what he knows or thinks the believer will need for his or her spiritual development.
- (65) The Church takes the information provided by the believer either in writing or verbally in connection with the religious services to an ordained person of the Church to be secrets of the confessional. These services are typically auditing activity and the ethics procedures, but the believer can provide information during any other service or communication that constitutes a minister's secret. When in writing, the minister's secret is put in folders, and is not recorded electronically.
- (66) In the statement, the legal representative referred to Article 8 of the Directive, which provides for the processing of special data. In the opinion of the legal representative, it is up to each believer what information to provide to the Church out of his or her religious conviction in the course of practicing the religion. This is part of the informational self-determination of the individual (the believer), as protected also by the Fundamental Law.
- (67) The legal representative also argued that the communication between the ordained person of the religious community and the believer is protected from the authorities. This is supported by Section 17 (4) of the Proceedings Act, which states: *'The authority shall be authorized to have access to privileged information—subject to the provisions of specific other legislation in terms of procedures and scope—as it may be required in the course of its proceedings and during the time required for its services'*. However, the explanation belonging to Section 17 of the Act adds: *'some secrets—for example, secrets of the confessional—are absolutely protected against administrative authorities, other types of secrets are subject to relative or selective protection'*. The fact that ministers or persons providing church services are bound to silence also means that the authorities cannot get to know the content of secrets of the confessional from other sources.
- (68) In the opinion of the legal representative: *'the secrets of the confessional are not identical with facts provided in certain types of religious conversation. The minister can deem as such anything he was told by believer in the trust that his or her words would not be disclosed to a person not entitled to know about them. These conditions are universal, and the Federal Rules of Evidence of the United States can serve as a basis for interpretation. Moreover, these provisions are also important because the Church in Hungary follows the guidelines of the Church in America, and most of the internal documents were made in the American (Anglo-Saxon) legal environment, and were then transposed into the European and Hungarian legal environments. Consequently, the same view appears also in the bylaws of the CSH as regards both religious persons and*

ministers with whom the notion of the seal of confession and its protection are associated.'

- (69) In response to the Authority's question, the legal representative argued that only authorized members of the Church, i.e. auditors, case supervisors, and ethics officers are entitled to participate in communication involving secrets of the confessional. No one else has access to secrets of the confessional, the minister's secret, not even the data subject. The relevant internal rules are mostly included in the declaration called 'Pledge of Religious Commitment and Confidentiality'. A person providing Church services studies and trains for years to become ordained clergy. All such persons sign the declaration mentioned above.
- (70) Also in answer to the Authority's question, the legal representative argued that a lowest age limit cannot be defined for auditing because it depends on the mental state and maturity of the particular believer. Legal minors may also receive auditing services, but such requests from parents cannot be considered typical. The use of the service is subject to explicit parental consent. The documents that a person even with full legal capacity shall not be accessed even by the guardian of a minor either with full or limited capacity.
- (71) According to their statement, the Church does not have a record of who and how many people profess to be Scientologists—such data can be obtained from census statistics. Nor is it able to list the number and person of volunteers and full-time staff. According to their statement, as every folder is paper based, as no systematic organization can be carried out between them, and as only an alphabetical list of them is maintained, it is not possible to list believers on the basis of their age. The only possible database is the one of book buyers and participants of fee-paying courses (Addresso), but the legal representative failed to provide the requested number of data subjects.
- (72) In his answer to the question concerning the legal status of auditors, the legal representative provided the information that *'each auditor is also a minister and is in the service of the Church, and pledges commitment to the Church. All auditors minister religious services. The training of auditors includes training for the ministry and ordination. He stressed that there is a huge difference between the technology of the auditing process and the practice of religion and other activities. The auditing process cannot be compared to anything else, and has no analogy. During the auditing process, no hypnosis or other trans techniques are used, and no drugs are administered. The person undergoing auditing is fully aware of what is happening to him.'*
- (73) An auditor is a minister or a student preparing to be a minister of the Church; the person being the audited is a 'preclear'; auditing is a session during which the auditor provides the preclear with the auditing process. 'Scientology auditing uses so-called "processes" that are a series of questions and instructions from the auditor, and help a person locate areas of spiritual distress. There are many different auditing processes in Scientology, each of which improves the individual's ability to handle a part of his or her existence, and make recognitions in relation to himself or the universe'. Case

supervisors minister church services, and receive special training for years, and continue training thereafter. A case supervisor can only be an auditor who is also a minister.

(74) **7.6** In answer to the questions by the Authority on establishing the identity of the data controller, including the questions on the specifics of the individual types of folder, the Church, as in the previous point, provided only general answers.

(75) **7.6.1 CF Folders**

(76) The mailing files include the correspondence of and with the Church. In the list of addresses, record is kept of Church clients and members. By 'client' the Church means one who has bought a book or more and has participated in courses. The list is electronic, the so-called Addresso system, which records names, addresses, membership data, donations, orders, and courses.

(77) The folders are stored in the registry of the registered office of the CSH Central Organization.

(78) With regard to the mailing files, their statement stated that personal data are not collected or recorded, there is therefore no data processing within the meaning of the Privacy Act; the folders are accessible only to those ministering Church services, and only for the purposes of corresponding with the given believer. Data transfer does not occur.

(79) **7.6.2 PC Folders**

(80) According to their statement, personal data are not collected or recorded, there is therefore no data processing within the meaning of the Privacy Act, the folders are accessible only if and when Church services are ministered, and only by the minister ministering the services (i.e. the minister proceeding, the auditor or the case supervisor). Preclear folders are not transferred; however, at the express request of the believer, it may be required that the paper-based Preclear folders be sent to another organization, but, again, this is not a case of data transfer within the meaning of the Privacy Act.

(81) Statements of consent in connection with the use of services are made on paper, and stored in alphabetical order without processing or copying in the Val Doc registry. Only the document called '*Medical Examination for Detoxification Programme and Physician's authorization to participate in it*' is an exception, which is kept in Preclear Folders.

(82) The folders are stored in the registry of the registered office of the Central Organization.

(83) **7.6.3 Ethics Folders**

(84) According to their statement, personal data are not collected or recorded, there is therefore no data processing within the meaning of the Privacy Act; the folders are accessible only when Church services, ethics procedures, are in progress, and only by the person ministering the services (the ethics officer/case supervisor).

(85) Ethics folders are not transferred; however, at the express request of the believer, it may be required that the paper-based ethics folders be sent to another organization, but, again, this is not case of data transfer within the meaning of the Privacy Act.

(86) The folders are stored in the registry of the registered office of the CSH Central Organization.

(87) 7.6.4 Staff Member Folders

(88) According to their statement, personal data are not collected or recorded, there is therefore no data processing within the meaning of the Privacy Act; the folders are accessible only to the HCO⁶ staff exclusively for HR purposes.

(89) Staff Member Folders are not transferred; however, at the express request of the believer, it may be required that the paper-based ethics folders be sent to another organization, but, again, this is not a case of data transfer within the meaning of the Privacy Act.

(90) The detailed procedures of appointment, promotion and transfer are laid down in internal guidelines; the internal organization of the Church is responsible for HR matters, and the procedure depends on the position.

(91) As regards the questionnaire called 'Life History Form' processed in the Staff Member Folders, the information given stated that the questionnaire is completed electronically, 'the responses are contained in a separately generated report in RPT format, and its printed version is placed in the given Staff Member Folder'. The HCO Area Secretary and the Director of Routing and Personnel have access to them; however, in the case of special or senior management positions, there may be a need also for a higher level of approval, in which case the report will be accessed by the level leader who makes the decision. The Life History Form is designed to screen for aptitude for a position and for meeting the goals set by the Church's internal rules. For different positions, different levels of ethics need to be achieved, where levels of ethics is screened according to the internal norms of the Church. A further aim of the questions is to screen bad faith and malignance towards the Church. Other aptitude questions may be concerning medical fitness, which is also an internal requirement.

(92) There is no data transfer, but the Senior HCO may request information for special or senior positions, in which case the report is transferred upon the applicant's request and written consent. The Life History Form is filled in by the data subject, and, if he or she wants to make a change, she or he fills it in again, and thus generates a new report. Until they are destroyed, they are stored in the Staff Member Folder. At the beginning of the questionnaire, there is a declaration of acceptance that the person concerned accepts by explicit consent.

(93) The Staff Member Folders are stored in the registry of the registered office of the CSH Central Organization.

(94) 7.6.5 VAL DOC Documents

(95) According to their statement, the aim of VAL DOC is to be able to check whether there is any consent by the data subject. If a specific dispute/examination is carried out, Val Doc aims to examine this, in which case the person responsible for the examination can

⁶ HCO stands for Hubbard Communications Office. HCO is responsible for employing staff, relaying incoming and outgoing communication, and maintaining ethics and justice among both Scientologists and staff.

access the entire paper-based folder with respect to the particular case. In their opinion, there is no data processing or transfer within the meaning of the Privacy Act.

(96) 7.6.6 Records by the International Association of Scientologists (IAS)

(97) According to their statement, applying for enrolment to the international organization is voluntary. The application forms are collected at the headquarters of the CSH Central Organization, or can be sent directly to IAS by believers. The data received by the CSH Central Organization are collected on behalf of the IAS, and are sent on to it without inspection or copying.

(98) 7.7 Electronic Data Processing

(99) According to their statement, the CSH does not have a server, and does not perform any database-related activities.

(100) The Central Organization uses the system software called INCOMM (International Network of Computerized Organized Management), developed specifically for the Church of Scientology International, and the developer has since become a 'branch' of the Church of Scientology International. INCOMM was developed in the early 90s, and accordingly the operating system language is DOS-based, and it is actually an early version of the currently widespread 'CRM' systems⁷.

(101) The CSH Central Organization has one server at its headquarters. It has neither a host service provider nor any additional data processor. Its computers are suitable for running the DOS operating system required for the operation of the INCOMM programme. There is only one database linked to INCOMM—Adresso.

(102) Adresso is a software specially developed for recording the contact information, purchasing data, courses (dates, fees), and donations of believers.

(103) Only authorized staff members have usernames, with regulated access.

(104) The Authority requested information on the processing of the personal data of those requesting the CSH Central Organization to contact them with offers and services no longer. As regards the data controlled about them, the legal representative stated that they appear in the Adresso system with addresses and indication by the Authority as persons not requesting services (this is the Robinson List of the Church). Alongside the names of the listed people, Adresso has a note: 'No local mail', and they thus receive no mail.

(105) **8.** In the course of the proceedings, the Authority requested, in the framework of internal legal assistance, the National Taxation and Customs Administration to send to the Authority, the data of staff members of the CSH and CSH Central Organization as of 1 January 2012.

(106) **9** The legal basis of the data processing practice being examined is typically a statement of consent by the data subject, and therefore the Authority, in order to come to a well-founded decision, needs to know the impact of the particular data processing

⁷ CRM is the abbreviation for Customer Relationship Management, which is characteristically a database for processing the data of the clients of a given company and the related materials. CRM systems are capable of supporting marketing, sales, call centre, and customer service activities.

operations carried out by data controllers on the decisions of the data subjects and on their exercise of their right to informational self-determination. To investigate this, the Authority appointed a forensic clinical psychologist expert to conduct examinations. The expert's tasks included the examination of documents and writings prepared and used by the CSH and CSH Central Organization—to be provided by the Authority—and the making of a psychological impact study to answer, in particular, the question what effects the statements and notifications, etc. included in the documents, their wording and structure, and the documents individually or as a whole can be presumed to have on the mental or psychological states, behaviour, decision mechanisms, states of consciousness of those that read/accept them, on their conduct related to the documents or occurring after having been acquainted with them.

- (107) In a new order, the Authority amended the appointment of the expert, supplementing it with questions. In this second order, the Authority invited the expert to indicate which data, which areas of data, are actually medical data, and which serve the purpose of health data processing, which are medically relevant data. The expert requested an extension of time, and informed the Authority that he was temporarily hindered due to other professional activities, and could not deliver the expert opinion within the deadline specified in the appointment order. The Authority accepted the expert's request, and extended the deadline for delivering the opinion by 15 days; the expert finally submitted it to the Authority on 25 September 2017.
- (108) **10.** The Authority rejected the objection of the CSH and CSH Central Organization on grounds of bias by the President of the Authority submitted on 24 April 2017. The legal representative of the CSH and CSH Central Organization filed a request for the review of the order with the Court dated 12 June 2017.
- (109) **11.** In their submissions dated 10 May 2017 and 11 August 2017, the CSH and CSH Central Organization requested the termination of the seizure of documents. In both cases, the Authority rejected the requests in view of the fact that the grounds provided for in Section 50/C. (1) of the Proceedings Act still existed, official proceedings were in progress, the facts were still being clarified, the documents seized were deemed material means of evidence, and thus it was necessary to maintain the seizure for the proceedings to succeed.
- (110) On 18 September 2017, the CSH Central Organization filed a petition for judicial review.
- (111) **12.** On 13 June 2017, the Authority conducted an on-site inspection in the building of the CSH and CSH Central Organization after notifying them.
- (112) The Authority ordered the attendance of a computer and forensic informatics expert at the inspection again, and to carry out searches, make copies/take samples, to examine the hardware, software environments used, the databases, records, and to make copies thereof.
- (113) At the beginning of the inspection, the CSH Central Organization handed over two declarations in English addressed to the Authority, stating that, on the one hand, the

Authority had no jurisdiction to examine the paper-based folders, and, secondly, the Authority violated human rights by investigating religious activity.

- (114) Representatives of the Authority raised several questions to the representatives of the Data Controllers concerning the way in which the Life History Form was handled with the aim of resolving the contradiction that Data Controllers had claimed in their previous statement that it was saved in RPT format while elsewhere they had claimed that it was only in paper-based format they were stored. The Data Controllers' representatives were unable to provide information, and undertook to answer in writing later.
- (115) In respect of filling in the Life History Form, they stated that only but not all staff members fill it in. Believers (PCs) are not required to fill it in.
- (116) As regards the question of the representatives of the Authority on how staff is selected, the legal representative of the CSH Central Organization stated that the Church employs whoever it wishes, applies criteria that it wants to, and a secular system of criteria could not be enforced upon it. The Church is free to choose the terms and conditions of employment, which no authority is entitled to override.
- (117) As to how the right of access of staff members to individual documents, to 'certain information required for the performance of their duties', is regulated, the legal representative replied that there were no rules linked to the definition of duties, the principle of purpose limitation is laid down, but there is no access disposition matching positions. In his view, the Church cannot be expected to do so, as it has no such obligation.
- (118) Again, the representatives requested to answer in writing the questions about who defines the range of data to be processed, and thus who determines the data content of the forms used by the CSH Central Organization, and how the Church of Scientology in Hungary is connected with the Church of Scientology International and the Continental Liaison Office in Copenhagen (by way of contracts, agreements and other documents).
- (119) In connection with marketing activities, the representatives stated that contact with believers used to be maintained by post, now it is maintained by mail, e-mail and telephone. There is a group of believers on Facebook, but that is not operated by the Church. Its aims include arranging times. The contact details of the data subjects come from themselves only, lists are not bought. Contact details are stored in CF Folders and in the Addresso system, which is accessible to authorized staff members. The Addresso system can be accessed only by the CSH Central Organization. The missions have their own databases, because they are established by private persons, and they decide autonomously on their own internal rules.
- (120) In answer to the question of the Authority, the role of the Flag representative in the organization was outlined. His or her duty is to ensure the functioning of the organization as required by the international organization. He oversees organizational activity, and is responsible for the appropriate organization of events, for ensuring that whatever is delivered at events reaches believers. He does not collect/process personal

data. He is in charge of the optimal functioning of the organization. It is a special position, for which training is done abroad. He is a member of the religious order, has a higher level of commitment than staff members. The Church of Scientology International decides on his appointment.

- (121) In answer to the question about the electronic processing of the personal data of believers, it was argued that the CSH Central Organization itself is a separate organization and an independent legal entity, which performs data processing independently of other missions. The missions are also separate legal entities, processing data separately, and independent data controllers. Their IT database is thus independent of other missions, and cannot therefore be transferred to each other. Data transfer can only take place if a mission member requests his or her transfer to another mission. In this case, only those of his or her data will be transferred that he or she requests, e.g. his or her student folder if required by a course. It was also added that the CSH Central Organization provides quality assurance and organizes events for the missions, and it does not qualify as a superior body.
- (122) The informatics expert examined the computers presented [...]. The CF Profiles were saved from the Parishioner Contact and Information 2.5.4 software, and the expert conducted a query on the data records with birth dates after 14 June 1999. The search brought 185 results, but several of them proved to be defective during random checks.
- (123) According to the statement of the representative of the CSH Central Organization, there were documents of several deceased persons among the documents the Authority had previously taken away, and there were two sets of documents belonging to deceased persons among the documents the Authority selected and took custody of during the on-going inspection.
- (124) **13** At the request of the Data Controllers, the Authority held a personal hearing at the CSH and CSH Central Organization building at a pre-agreed time on 30 June 2017.
- (125) The subject of the personal hearing was the Life History Form. The software used for filling in the Life History Form was made available to the expert appointed by the Authority by the representative of the SCH Central Organization on the only laptop which the software was claimed to have been exclusively installed on. It was claimed that this was a filling-in software in order to achieve a 'text-edited version'. It is made available by the Church of Scientology International, used in many places in the Church, but not in the Missions. It is an extended CV that serves to check whether an applicant meets certain ethical standards for leadership positions. It helps determine how trustworthy one is, or tell whether he or she has taken out a bigger loan, the paying off of which would make him or her neglect responsibilities. In answer to the question which positions require its completion, it was stated that for example a leader of an org,; but internal church rules lay down exactly which position. This they promised to specify in writing. The document is available only in English.
- (126) According to their statement, a staff member fills in the Life History Form alone, when, for example, he applies for a new a position. If he needs to interrupt the completion, he can save what he has done, at which point a file is [...] created, and it will

- be stored for 24 hours, and be deleted thereafter. When the filling in is complete, the file is deleted. After filling the questionnaire in, it is printed out, put in the Staff Member Folder, and sent to where he or she is applying for the position.
- (127) The software presented during the on-site inspection was a 2001 version, yet the parameter file from which questions are retrieved is from 2016. According to their statement, the international organization makes changes in it, the CSH Central Organization is not permitted to make any.
- (128) **14** The questions left unanswered at the on-site inspections were answered by the legal representative of the SCH and the CSH Central Organization in a letter dated 5 July 2017 after an extension of the deadline.
- (129) In the reply letter, it was repeatedly stressed that the Life History Forms are stored only in printed format, it is filled in not by believers but senior executives from among the staff or by applicants for senior positions abroad. The completed questionnaires are not saved in a separate database, the printed versions are transferred to the superior bodies that requested their completion. In this case, the legal basis for the transfer of data is the explicit consent by the data subject. The Life History Forms are 'stored until the purpose is achieved'.
- (130) In his statement, the legal representative also outlined the process of becoming a member of staff. Applicants must complete the following documents: 'Qualification Checklist for Religious Persons', 'Clear Planet Commitment Pledge', 'Application Form for Religious Persons', 'Pledge of Religious Commitment and Application for Religious Service to the Religious Association of Scientology Central Organization' and its two annexes, the 'Pledge of Religious Commitment' and the 'Pledge of Religious Loyalty'.
- (131) The requirements for certain positions in the CSH Central Organization are contained in the internal prescriptions of the Church, which, in their decided opinion, is not to be examined by any public authority. The Life History Form is to be completed by applicants intending to join the Sea Org or in the case of those Church positions where a person's higher integrity and higher ethical standards are required. Some of the questions of the Life History Form are intended to determine whether senior executives meet high ethical standards and the expectations of the Church of Scientology.
- (132) Staff members are religious persons, and minister Church services, which, in their opinion, are not subject to the Labour Code. Staff members' status is laid down by the Founding Charter of the association. According to their statement, it is part of ecclesiastical autonomy that a church is exempt from state labour law constraints. This means that a church has the right to choose its staff according to the pertaining rules of the given ecclesiastical community, which opinion was sought to be corroborated by reference to several decisions of the European Court of Human Rights⁸ and to Council Directive 78/2000/EC.
- (133) In reply to the question of the Authority as to who determines the personal data to be entered in each statement of consent and who prepares the forms, it was stated that

⁸ *Obst v. Germany, Ms Siebenhaar v. Germany.*

the documents used by the CSH Central Organization were obtained at its inception from the Church. Other data contained in the statement (social security number, tax number) are made necessary by tax regulations.

- (134) The answer to question of Authority as to how the various levels of the Church of Scientology are linked, what written form lays down the position of the Church of Scientology in Hungary in this chain was as follows: *'the Church of Scientology assumed the form of a religious organization, it unifies and aligns a multitude of diverse religious activities, including not only ministering Scientology religious services and practices, but proselytization, ecclesiastical management, relay of communication, production of dissemination materials and many other functions. Thus the Scientology religious community is united both by common beliefs and practices and an organizational form uniquely suited to its religious mission.'* It was again confirmed that each Church of Scientology is a separately incorporated organization, and each is governed by its own management body. The legal representative outlined again the organizational structure of the Church, but did not give a clear answer to the question raised by the Authority, and failed to attach any contract or other agreement on how they are connected to the international organization.
- (135) According to their statement, the Security Camera System is operated by the CSH Central Organization. In answer to the question on the field of view and the number of the cameras, the statement referred to the opinion by the forensic expert. According to their statement, data processing is for security and property protection purposes, images are used when a security event is reported, camera images are stored for 3 days, no data processor is employed. As the legal basis for data processing, the Property Protection Act on and an assessment of interests based on a legitimate interest was referred to. The data subjects are informed by signboards and by the relevant Rules of Data Processing being made available to them at the reception desk.
- (136) As regards their marketing activities, the Authority was informed that the primary mode of contact with believers is personal encounter. It was confirmed that contact information is obtained exclusively and directly from believers. Book buyers give their data when purchasing. Various declarations are used, so there are such declarations for book buyers (both direct and online), public events (e.g. the celebration of L. Ron Hubbard's birthday), as well as other registration forms (such as for courses).
- (137) The contact details of the data subjects are stored in the Parishioners Contact System software. According to their statement, contact details are not given in the event of all services, e.g. book buyers' data are not automatically entered in the software, only after the use of specific church services.
- (138) The software distinguishes between requests for data deletion and for no promotion. Accordingly, it differentiates between various categories: it marked 'asked off' if the person does not want e-mail and telephone contact; the mark 'no local mail' means that the person does not want letters to his postal address; the mark 'deadfile' means that the person made statements unacceptable to the Church, and communication with him is considered as closed; and dead persons are marked 'deceased' in the system.

- (139) A statement was made concerning the processing of personal data of third parties. In their opinion, there is no separate internal regulation for the processing of data of third parties; as no data is processed, the data of third parties is not stored electronically. As far as the data of third parties communicated during confession is concerned, their opinion is that, as man is a social being, knowing his personal and material environment is essential.
- (140) **15** The forensic informatics expert completed the examination of the software presented at the personal hearing held on 30 June 2017.
- (141) The Life History Form software is a form-filler application, which displays a programme (form) to be filled in on the basis of a parameterized file, and which enables the entry of data in accordance with the parameters specified. The last modification date of the programme is 6 June 2001, and that of the parameter file is 18 September 2016.
- (142) The application automatically saves the values of fields already filled in at intervals, but it is also possible to save it manually. The expert found that the Life History application does not operate in a network environment, it does not use a database, and saves data by saving whatever data the form was just filled in with. Opening the application after exiting it uploads the data in the form that had been saved.
- (143) In the expert's experience, the application does not automatically erase the [...] files created due to automatic savings of the data entered in the form within 24 hours, but he also added that, although he did not find a scheduled task or an external application for carrying out the erasure, it could not be ascertained without doubt that the laptop had no application with such a function.
- (144) **16** The forensic informatics expert delivered his opinion dated 19 September 2017 on the examination of the files on the servers of the CSH and CSH Central Organization.
- (145) During the investigation, the on-site inspection, the expert made a copy of the database on the Microsoft SQL Server, and documented the software and their operation seen during the on-site inspection with photographs.
- (146) The expert, in the lack of the appropriate right of access, was able to carry out the data copying from the database on the SQL server by switching off the server. At the Authority's request, he examined the searches done during the on-site inspection and data tables saved while saving the database—essentially based on the data recorded by the Parishioner Contact and Information 2.5.4. and the Addresso database, and determined the number of minors concerned, the number of people having used the detoxification and auditing services in Budapest, and made searches for the keywords the Authority supplied.
- (147) In the course of these, he found the data sheets of 185 minors, and established that 2208 persons participated in detoxification services at least once, and 2261 in auditing at least once.
- (148) **17** On 25 September 2017, the appointed forensic clinical psychologist expert submitted his opinion. In the completed opinion, the expert considered the Church's tests, the auditing process, the detoxification, and the declarations filled in connection to these.

- (149) **17.1.** Among the tests, he analysed the Oxford Capability Analysis (OCA), the Leadership Aptitude Survey, the Aptitude Test, and the IQ test/Novis Mental Ability Test (which is called an IQ Test even on the Website).
- (150) **17.1.1** With regard to the first and the last test, the expert stated that the measurement of intelligence is a healthcare activity, and that the OCA test does not have Hungarian standards⁹. Given that a test cannot measure personality and intelligence simultaneously, applying the OCA test for measuring intelligence misleads the subject, and creates a false self-image. Its questions in many cases cannot be linked to any psychological feature, are too general, or contain elements that cannot be answered clearly, which render them unsuitable for the intended purpose. In the expert's view, the OCA test is a series lay questions with no scientific basis, presenting it as a test method without the prior information of the subject that no well-founded conclusion can be drawn from it constitutes deliberate misrepresentation.
- (151) The expert added that measuring personality and intelligence is a healthcare activity that can only be practiced by persons authorized to do so.
- (152) **17.1.2** With regard to the Leadership Survey, the expert stated that it does not measure any leadership ability; a testee will answer correctly if his worldview is the same as that of Scientology. The procedure, therefore, does not measure anything except loyalty to the teachings of Hubbard. Presenting the method in another way is misleading. Ability testing cannot be linked to any measuring of mental or other ability. It has no scientific value: it cannot be trusted, it is invalid and not objective. At the same time, it gives the impression that it serves to assess a person's abilities, thus providing a basis for deception and misdiagnosis. The situation is exacerbated by the fact that it is repeated every six months, as if changes were to take place, or it were able to test efficiency of any treatment and its development results.
- (153) **17.1.3** According to psychologist's expert opinion, what aggravates the non-professionalism of the tests is that they are used for children and determining the development work to be done with them. Thus, a false diagnosis is set up, because an untrained and unauthorized person, by way of non-scientific means, draws conclusions on a person's emotional, intellectual and personal state.
- (154) **17.1.4** The expert emphasized that the use of psychological examination procedures requires a declaration of informed consent. In the case of a child, the written (informed) consent of the parent (guardian) is also required. Data obtained from tests constitute health data, are therefore be stored and processed pursuant to the rules of health data processing.
- (155) **17.2 Auditing and E-meter**
- (156) **17.2.1** Auditing is essentially process of exploring a psychological problem, providing psychological counsel and development. It is a long-drawn process even taking several years between a person regarding himself a minister of the Church of Scientology (auditor) and the subject (preclear or PC). The goal is 'purification', liberation from the

⁹ In Hungary, the professional accreditation and adaptation of tests is done upon application by the Test Methodology Committee of the Hungarian Psychological Association.

problems of the subject, which are considered problems partly by the subject and partly by the beliefs of the Church of Scientology.

(157) During auditing, an E-meter ('electropsychometer'), an instrument much like one for measuring galvanic skin response, is used; the subject holds on to it while the auditor asks questions. The auditor proceeds according to a strict scenario; not only are his questions but also his tone is regulated. The questions relate partly to the past, the past experience of the subject and his previous health records, treatments, and partly to his current life circumstances, during which an over ten-page questionnaire is asked. The problem-exploring process of auditing is practically a biofeedback technique coupled with suggestive communication known from therapeutic methodology; it constitutes indeed a healthcare activity.

(158) According to the expert opinion, the E-meter is not a polygraph, because it only measures one parameter compared to a polygraph recording several physiological parameters. An E-meter is thus a biofeedback technique. Biofeedback is an instrumental measuring of physiological functions that are little or not at all conscious, and is also the processing and feedback of the obtained measurement result in order to inform the person of his or her normal or irregular biological functioning and to learn to shift those physiological values in the desired direction.

(159) Auditing is suggestive communication, because the auditor gives suggestions to the subject in the auditing process. 'Suggestions are messages (mostly verbal) that trigger involuntarily reactions from the recipient' (Varga, 2011). This creates a changed state of consciousness. Applying suggestions and the targeted use of altered states of consciousness require appropriate skills (and qualifications, authorization).

(160) **17.3 The Assessment of Auditing**

(161) **17.3.1** The expert reviewed the so-called 'Rundown documentation', which includes hundreds of 'Objectives', that is instructions for auditors on using auditing techniques. These instructions are numbered, and have names. According to the expert, whether written down or uttered verbally, these are treatments, moreover, they are hypnotherapy based on modification of consciousness. Whether by medication (e.g. narcosis) or by some psychotherapeutic method (e.g. hypnosis, mindfulness therapy, relaxation and symbol therapy), modification of consciousness constitutes a healthcare activity.

(162) **17.3.2** Certain assists/instructions are even more aimed at medical, healthcare activity. Such is 'Contact Assist', which 'any type of injury can and should be handled with'. Under 'Contact Assist', it is said that 'the ways assists can be applied are almost limitless. [...] It is good not only for hands hit or wrists burned. It can be done with mordant back pain, constant ear pain, infected boils, or an upset stomach.' The instruction 'exactly as it is in chronic somatics' is used for diseases chronic according to Scientology: for example, it is recommended for treating asthma.

(163) **17.3.3** The 'False TA Checklist' explains the use of the E-meter to the auditor. However, the document does not inform the auditor that his activity will in fact be a

biofeedback procedure. The 'instruction' material does not cover the actual operating principle of the E-meter and the potential health consequences of its application. 'Scientology Auditing C/S-1' describes the basic concepts of Scientology, the basic factors of auditing. There is no mention in this that non-ecclesiastical activities are parts of auditing, in other words, the fact that during auditing healthcare activities are carried out.

- (164) As per the 'PTS RD Correction List', a subject must acknowledge if he is 'still in communication with a person or group that does not like Scientology'. The process isolates a person from his former social environment, and creates a sense of exclusion. The prohibition of communication cuts the subject from followers of 'other religions', and surrenders him to the Church of Scientology since he can only maintain contacts with Scientologists or their sympathizers. In the course of a procedure otherwise qualifying as a healthcare activity this practice is wholly unreasonable.
- (165) The 'Johannesburg Confessional List' means a testimonial where personal and intimate information is given in writing, such as '*Have you ever engaged in adultery?*' or '*Have you ever slept with a member of a race of another colour?*' According to the expert opinion, answering the 94 questions of the confession surrenders the subject completely to the Church of Scientology. The explicit aim of the questions is to examine the suitability of the subject for employment in the Church of Scientology in the text. In the expert's view, however, no employment aptitude examination can include questions on private life, the mapping of sexual habits or suggested discrimination. The information obtained thereby is particularly sensitive requiring special data processing, for which there are no guarantees in the text.
- (166) **17.3.4** On the basis of examining the means and methods of the activities carried out during auditing, the expert found that these constitute healthcare activities, and are therefore subject to appropriate training, practice licensing, and require a consulting room licensed in a healthcare procedure.¹⁰ Moreover, most of the methods used in auditing induce altered consciousness (and are virtually hypnotherapy), but the other methods used also result in the narrowing of consciousness and social submission in the subject. Both suggestive, mind-altering methods (hypnotherapy) and biofeedback constitute therapeutic procedures, healthcare activities.
- (167) However, in describing the processes, nowhere is it mentioned, for example, that these procedures can only be performed, following medical examination, by a psychotherapist specialist physician or a specialist psychologist with special training in hypnotherapeutic methodology. Furthermore, as there is no professional healthcare

¹⁰ Pursuant to the general concept laid down by Section 103 of Act CLIV on Health of 1997, 'Psychotherapy is a therapeutic process based on a variety of scientifically-founded methods, used to treat persons with psychological or psychosomatic disorders in multiple therapeutic sessions, each with a set time-frame, which may be provided for individuals or groups by a physician or a graduate psychologist having the required qualification.'

control, at no point do the aforementioned meet the effective professional healthcare requirements and regulations.

(168) The auditor keeps a record of the subject (the 'PC Folder'). In this, he takes down the results of the E-meter examinations, and includes all the documents of the auditing process. The auditor is bound by a declaration of confidentiality. The confidential, in many cases medical and intimately personal information is reviewed by the 'case supervisor', who oversees the auditor, and is also bound by confidentiality.

(169) **4.17 The Expert Assessment of Statements of Consent:**

(170) **17.4.1** The form 'Introductory Scientology Courses Application Form, Agreement and General Release Declaration' states that '*Scientology and Dianetics are neither offered as physical therapies nor do they manifest themselves as physical healing, and there is no statement in the sense thereof*', however, the expert believes that is misleading in view of the auditing and testing processes above, and so is the statement that they do not accept the participation of people who want to have some kind of physical, mental illness or condition treated because these are very ones they treat with 'assists' and 'detoxification'.

(171) By signing the '*Basic Scientology Services Application Form, Agreement and General Release Declaration*' form, the believer accepts that 'auditing is a unique form of religious counselling', that what he receives is not 'medical treatment', and that the Church of Scientology has no healthcare responsibility in this regard. In the experts view, however, the E-meter, based on the parameters of its operation and use, cannot serve any religious ritual purpose because it is based on the principle of biofeedback technique; furthermore, it also a false statement that the Church of Scientology is not interested in the health state of the subject, because they specifically write about therapy in auditing, and, by the witness of the documents, they heal diseases, even though they regard them as 'spiritual' problems.

(172) In the expert's view, the declaration is misleading because it appears to give consent to the processing of personal data (including special data) of the subject, but since he or she is unaware of the fact that the data collected during auditing relate to medical condition, he or she does not have a hint that he or she is providing highly sensitive data, which could only be requested, used and stored in accordance with the regulations of medical data processing.

(173) The expert also found the declarations capable of intimidating and creating feelings of vulnerability. He also found it misleading that the declarations make general and factually incorrect allegations whereby a person who does not know about Scientology processes cannot tell what exactly he has consented to.

(174) The expert notes in particular that the same declarations are required to be signed by minors who obviously do not understand much of the agreement, although, in most cases, they ask parents to 'countersign', but there are several declarations without such a requirement.

- (175) **17.4.3** In connection with the Detoxification Programme and the related documents, the expert found that the detoxification programme of the Church of Scientology has a name that is known to exist as a legitimate healthcare activity. Under medical norms, detoxification can only be performed by a person and institution authorized to perform healthcare activities, i.e. the treatment can be performed subject to appropriate qualifications and a licence to operate with the name of the activity issued to the holder, and only in a consulting room licensed to provide healthcare by the National Public Health and Medical Officer Service and a liability insurance, and in compliance with the prescriptions of effective regulation of the Ministry of Health required for the activity.
- (176) According to the expert opinion, in its name, 'detoxification', is exactly the same as the 'detoxification' in medicine, yet it is a completely different procedure. In fact, it is purging, sweating (by running and taking a sauna) and the administration of extremely high doses of vitamins, which has nothing to do with scientific medicine—as sweating and increased excretion cannot detoxify the human body.
- (177) The expert also found it misleading that, prior to Scientology detoxification, a general practitioner's negative status certificate is issued, which may suggest to those concerned that the coming intervention is a healthcare provision, and a healing effect can be expected.
- (178) It is misleading, even deceptive, that Scientology detoxification is presented as medicative, and medical activity is meant by it, while it has nothing to do with the science of medicine, because sweating and increased excretion cannot detoxify the human body.
- (179) **17.4.4** In the opinion of the expert, the declarations and notices discussed above therefore do not correspond to the actual content of the activities, and are thereby misleading, and give rise to unfounded consent by the data subjects. Occasionally, minors also give their consent without their parents countersigning their declarations, not to mention their informed consent or presence when the child is briefed. Because a person who has not been sufficiently informed has no prior knowledge of the kind of data that will be recorded for such kinds of procedures, he or she will give his or her consent without genuine information. A minor is obviously unable to decide on his declaration and its consequences. The expert also considers it disquieting that no mention is made of the fact that highly sensitive, intimate and/or medical data are concerned, the processing and storing of which is even more strictly regulated.
- (180) **18** During the administrative proceedings, the Authority provided the representatives of the CSH and CSH Central Organization the opportunity to inspect documents on five occasions: on 14 December 2016, 25 April 2017, 12 June 2017, 31 July 2017, and 15 September 2017.
- (181) **II Documents Examined by the Authority**
- (182) During the proceedings, the Authority examined the documents the Data Controllers made available and sent, as well as the 137 folders seized and taken custody of in the course of the on-site inspections. The detailed and itemized presentation of the content

of each of these types of document is not broached in the present point due to their very large quantity, but the Annexes to the Decision do describe the structure of the files and types document the files contain.

(183) In what follows, the Authority confines itself to introducing the contents of the data processing information materials.

1. Data Protection Rules

(184) The document called Data Protection Rules is actually an internal regulation summing up tasks and obligations related to the control of personal data.

(185) The section of the Rules outlining domestic regulations refers to Act XX of 1949, that is the Constitution, Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest (hereinafter the Data Protection Act), and sets forth *'the parts most important for the organizational units of the Church'*, namely, the definitions of the basic concepts in the interpretative provisions, the sections on the purpose and legal basis of data processing, and the rights concerned on the basis of the Data Protection Act, literally quoting the text of the law.

(186) The Rules then go on to summarize—by folder type—the purpose of processing and the method of retaining the data contained usually in the given folders, in some cases citing the most important statements of consent in the folder types (e.g. seal of confession, accorded confidential treatment).

(187) The penultimate section describes the practical steps of fulfilling requests for data erasure, the process of erasure, as well as the obligation to notify when personal data is transferred to other countries, foreign organs.

(188) The Rules conclude by outlining data security requirements.

(189) 2. Data Processing Notice and Data Protection Declaration

(<https://www.oca.szcientologia.org.hu/>):

- a) With regard to the identity of the data controller, the notice includes the following: 'The present website is operated by the Church of Scientology International' (hereinafter the data controller), while, under the heading 'Data controllers and their data', the Church of Scientology Europe and Religious Association of Scientology Central Organization (1061 Budapest, Paulay Ede utca 52.) is given.
- b) The purpose of data processing is to provide services, to control operation and prevent abuse, to contact the data subject, to send e-mail newsletters containing commercial advertisement to users, to provide information on current affairs, products, and data processing for statistical purposes.
- c) As the legal basis for the processing of data, consent by the data subject, and, as legal reference, Section 13 (3) of Act CVIII of 2001 on E-commerce and Section 6 (5) of Act XLVIII of 2008 on Commercial Advertising are given.
- d) As regards the duration of data processing, it is stated: 'The answers to the test questions are stored for 60 days after the test is completed. The statement of consent is valid until withdrawn.'

- e) As regards the transfer of data, it is stated: 'From the data provided, the responses to the test questions are transferred under the same conditions to third parties, such as the Religious Association of Scientology in Hungary Central Organization (1061 Budapest, Paulay Ede 52).
- f) As data processor, the Religious Association of Scientology in Hungary Central Organization (1061 Budapest, Paulay Ede 52) is given.
- g) Information on the rights of data subjects is provided as follows: the data controller provides information on their rights, but the following information is given regarding the fulfilment of such requests by the data subjects: 'information shall be given in writing by the Data Controller within the shortest possible time, but not later than 30 days from the filing of the request'.
- h) With regard to remedies, the Data Controller informs the data subjects that, apart from judicial review, they can seek remedy by appealing to the Data Protection Commissioner; the Data Controller provides information on the rights of data subjects under Act LXIII of 1992 on the Protection of Personal Data and The Publicity of Data of Public Interest.

(190) **3. Data Processing Notice and Data Protection Declaration**

<http://www.tesztkozpont.net/>:

- a) With regard to the identity of the data controller, the notice includes the following: 'The present website is operated by the Church of Scientology Central Organization (1138 Budapest, Váci út 169; hereinafter CSCO), and, under the heading 'Data controllers and their data', the Church of Scientology Central Organization (1138 Budapest, Váci út 169; hereinafter CSCO) is given.
- b) The purpose of data processing is to provide services, to control operation and prevent abuse, to contact the data subjects, to send e-mail newsletters containing business advertisement to users, to provide information on current affairs, products, and data processing for statistical purposes.
- c) As the legal basis for the processing of data, consent by the data subject, and, as legal reference, Section 13 (3) of Act CVIII of 2001 on E-commerce and Section 6 (5) of Act XLVIII of 2008 on Business Advertising are given.
- d) As regards the duration of data processing, it is stated: 'The answers to the test questions are stored for 60 days after the test is completed. The statement of consent is valid until withdrawn.'
- e) As regards the transfer of data, it is stated: 'From the data provided, the responses to the test questions are not transferred to third parties, they have no access to them, with exception of the Religious Association of Scientology in Hungary and the legal persons it established. Central Organization (1061 Budapest, Paulay Ede 52).
- f) As data processor, the Religious Association of Scientology in Hungary Central Organization (1061 Budapest, Paulay Ede 52) is given.
- g) Information on the rights of those concerned is provided as follows: the Data Controller provides information on their rights, but the following information is given regarding the

fulfilment of such requests by those concerned: 'information shall be given in writing by the Data Controller within the shortest possible time, but no later than 30 days from the filing of the request'.

- h) With regard to remedies, the Data Controller informs the data subjects that, apart from judicial review, they can seek remedy by appealing to the Data Protection Commissioner; the Data Controller provides information on the rights of data subjects under Act LXIII of 1992 on the Protection of Personal Data and The Publicity of Data of Public Interest.

(191) 4. Rules Concerning the Cameras for Property Protection Purposes

(192) The Rules Concerning the Cameras for Property Protection Purposes lay down the operating principles of a closed-circuit camera system operating at the seat of the CSH Central Organization, the areas of its use and the methods of handling it.

(193) According to the Rules, the purpose of the system is to 'protect the security of the area, the safety of payments made in cash and safe-keeping of paper-based files'. As per this section of the Rules, the interests associated with achieving the above goals override the image rights of data subjects.

(194) The office building and its entrances are designated as the area of use of the system. The cameras record images 24 hours a day in a closed-circuit cable system; the camera images can be viewed in the server room, and are saved on hard disk.

(195) In the words of the Rules, 'visitors acknowledge that cameras protect the property of the Church of Scientology Central Organization, and that any data comes into the property of the organization through the camera system is a secret, it may not be disclosed to third parties, but it can be used as evidence against them in proceedings'.

(196) According to the Rules, records can only be retrieved upon permission, and may be archived on a data carrier upon written request. On providing information on data erasure and destruction, the Rules state 'pursuant to Hungarian law'.

(197) In addition to the above, the rules mention other regulatory documents, such as the Privacy Act, Act CXXXIII of 2005 on Persons and Property Protection and on the Activity of Private Detectives (hereinafter the Property Protection Act), the Fundamental Law and the Directive.

(198) III. The Legal Provisions Applicable to the Case

1. The Fundamental Law of Hungary (25 April 2011)
2. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Directive).
3. Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (the Privacy Act).
4. Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (the Proceedings Act).
5. Act V of 2013 on the Civil Code (hereinafter the Civil Code).
6. Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (hereinafter FCR Act).
7. Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship.

8. Act CLIV of 1997 on Health (hereinafter the Health Act).
9. Act XLVII of 1997 on the Processing and Protection of Health Care Data and Associated Personal Data (hereinafter the Health Data Act).
10. Act No. CVIII of 2001 on Certain Aspects of Electronic Commerce and Information Society Services (hereinafter E-commerce Act).
11. Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities (hereinafter the Advertising Act).
12. Act CXXXIII of 2005 on Persons and Property Protection and on the Activity of Private Detectives (the Property Protection Act).

(199) **IV. The Findings of the Authority**

- (200) According to Scientologists, 'Developed by L. Ron Hubbard, Scientology is a religion that offers a precise path leading to a complete and certain understanding of one's true spiritual nature and one's relationship to self, family, groups, Mankind, all life forms, the material universe, the spiritual universe and the Supreme Being'.¹¹
- (201) The first Church of Scientology was founded by L. Ron Hubbard in 1954. Hubbard is the source and founder of Scientology, he developed and created Dianetics and Scientology.
- (202) The Church of Scientology International, located in Los Angeles, California, is the mother Church of Scientology, as described earlier. The structure of the Church is hierarchical, missions, area groups, central organizations, liaison offices make up its organization.
- (203) Standing out of the organization, Sea Org, the 'religious order' of Scientology, is made up of the world's most committed Scientologists, has about 5,000 members, and they are at the helm of the Church.
- (204) The Church of Scientology in Hungary was founded in 1991, and was registered by the Fővárosi Törvényszék (Budapest-Capital Regional Court) by its Decision no. 6 Pk.66534/1991. Under Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (the FCR Act), it was qualified as a religious association, and operated thus as a general legal successor of the Church. With the retroactive decision of the Constitutional Court, it regained its church status. Subsequently, the Fővárosi Törvényszék (Budapest-Capital Regional Court) registered the Religious Association of Scientology in Hungary as a religious organization in November 2013. In the course of the proceedings conducted by the Authority, the religious organization assumed the name Church of Scientology in Hungary pursuant to Section 7 of the FCR Act.

(205) 1. The Activity of the Church

- (206) 1.1 Before analysing the lawfulness of the data processing, it is necessary to clarify the range of persons involved in the data processing and to describe the typical manifestations of the data processing, the types of file.
- (207) In Scientology, the entire path of spiritual development is represented by the Bridge¹². It outlines the precise steps of auditing and training the individual has to go through to reach a higher level of consciousness.
- (208) The Bridge of Scientology is a guide for the individual to see the basic order of progress in auditing and training.

¹¹ <http://www.scientology-budapest.org/>

¹² The Bridge to Total Freedom: Scientology Classification and Gradation and Awareness Chart.

- The auditing routine is made available by Scientology ministers. It is a precisely planned procedure in which the auditor and his or her patient seek to solve the psychological problems of the individual based on the instructions of the case supervisor, who directs the work of the auditors.
‘There are many, many different auditing processes and each one improves the individual’s ability to confront and handle part of their existence. When the specific objective of any one process is attained, the process is ended and another can then be used to address a different part of the person’s life. There are no variables in the technology of auditing, no random results of haphazard applications. Auditing is not a period of vague free association. Each process is exact in its design and in its application and attains a definite result when correctly ministered.’¹³
 - In training, the path towards spiritual freedom can be achieved by studying the writings of Scientology. By gradual advancement in training, the individual acquires the knowledge and abilities needed to minister services belonging each to level to others.
- (209) During auditing, the auditor asks questions from the individual, who responds, and the auditor acknowledges it. Auditing is a precise activity, thoroughly codified and has exact procedures. A note (worksheet) is made of what was said during the auditing session, which is then put in the individual’s folder. Each page of the worksheet bears the name of the individual.
- (210) In the course of training, the philosophy or technology of Scientology is delivered persons or groups. Services are organized around a *checksheet*, which is a list of materials, often divided into sections, that give the theory and practical steps which, when completed, give one a study completion on that subject. Practical exercises include drills to perfect application.¹⁴ After completing a training service, a certificate is issued. The main focus of training is application.
- (211) The auditing route and the training route are different routes, parallel to one another. In an optimal case, the individual goes along both.
- (212) **1.3** The range of data subjects is made up of participants of courses organized by the Church, book buyers, believers (including members of the Church)¹⁵, ministers¹⁶, and staff members¹⁷ who provided their personal data to the Church, as well third parties included in individual folders and persons affected by camera surveillance.
- (213) 1.4 Ranges of Data Processed—the Folders**
- (214) The personal data, being the object of the proceedings, processed by the Data Controllers is typically found in the folders assembled by the Church. The annexes to the Decision list the types of document contained in each folder, while the present section

¹³ Source: <http://www.szcientologia.org.hu/faq/scientology-and-dianetics-auditing/what-is-auditing.html>

¹⁴ Source: <http://www.szcientologia.org.hu/faq/scientology-and-dianetics-training-services/what-form-does-scientology-training-take.html>

¹⁵ Article 8 of the Articles of Association of the Church says: ‘The Church of Scientology has a record of members but it primarily has believers’. The member of the Church can be any natural person who may participate in the events and activities of the Church, and has an active or passive right to vote with regard to Church organs.

¹⁶ A minister is one who has completed Scientology ministerial training, possesses a valid certificate thereof, was ordained, practices his or her ministry, delivers religious services and rites to believers in an organization or area of Scientology in accordance with his calling.

¹⁷ Staff membership cannot be defined unequivocally from the sources available to the Authority, yet the Church typically employs believers under service contracts who hold various offices in the Church.

of the Decision describes the personal data processed in each type of folder and document. The types of folder assembled by the Church are as follows:

- a) Staff Member folder: Annex I
- b) Preclear Folder, also known as PC Dossier: Annex II
- c) Ethics Folder: Annex III
- d) Mailing files, (Central Folders, abbreviated as CF Folders): Annex IV
- e) Valuable documents (Val Doc):

(215) 2. Issues of Procedural Law

(216) 2.1 The Scope of the Privacy Act

(217) **2.1.1** The Privacy Act provides for its scope in Article 2.¹⁸ In respect of its territorial scope, it states that its rules apply to data processing and controlling in Hungary. In Section 2 (2), the Legislator renders the Privacy Act applicable to fully or partially automated, as well as manual data processing and data process.

(218) **2.1.2** The CSH and CSH Central Organization disputed that the Authority has any scope to examine the personal data processed in the PC Folders, Ethics Folders and Staff Member Folders pursuant to Recital 27¹⁹ and Article 3²⁰ of the Directive, as detailed in points in points I.5 and I.7 above.

(219) The directives adopted by the institutions of the European Union for the purposes to be achieved are binding for the Member State or Member States addressed. However, the form and means of achieving the objectives can be chosen by the Member States. The national legislator is to implement a directive, and adapt national legislation to the objectives of the directive. Member States nevertheless have some latitude in the implementation, which allows them to take account of national specificities.

(220) As also stated in Article 34 of the Directive, directives are addressed to the Member States, and do not, in principle, apply directly. However, according to the decision of the Court of Justice of the European Union, certain provisions may exceptionally have direct effect when:

- a) the directive is not or improperly transposed into national law;
- b) the provisions of the directive are unconditional and sufficiently clear and precise;
- c) the provisions of the directive confer rights on individuals.

(221) According to the general practice of the Court, a rule of a directive is directly applicable even when it does not confer rights on individuals, and thus only the first and

¹⁸ Section 2 (1) of the Privacy Act states: 'This Act shall apply to all data control and data processing activities undertaken in Hungary relating to the data of natural persons as well as data of public interest and data public on grounds of public interest.'

¹⁹ Recital 27 of the Directive states: 'Whereas the protection of individuals must apply as much to automatic processing of data as to manual processing; whereas the scope of this protection must not in effect depend on the techniques used, otherwise this would create a serious risk of circumvention; whereas, nonetheless, as regards manual processing, this Directive covers only filing systems, not unstructured files; whereas, in particular, the content of a filing system must be structured according to specific criteria relating to individuals allowing easy access to the personal data; whereas, in line with the definition in Article 2 (c), the different criteria for determining the constituents of a structured set of personal data, and the different criteria governing access to such a set, may be laid down by each Member State; whereas files or sets of files as well as their cover pages, which are not structured according to specific criteria, shall under no circumstances fall within the scope of this Directive'.

²⁰ Article 3 (1) of the Directive states: 'This Directive shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.'

second conditions are met. In the opinion of the Authority however, the Central Organization cannot rely directly on the Directive because its transposition has been implemented appropriately in Hungarian law for the following reasons:

- (222) The purpose of the Directive is set out in the first two recitals as follows:
- (223) ‘(1) Whereas the objectives of the Community, as laid down in the Treaty, as amended by the Treaty on European Union, include creating an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, ensuring economic and social progress by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its peoples, preserving and strengthening peace and liberty and promoting democracy on the basis of the fundamental rights recognized in the constitution and laws of the Member States and in the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (224) (2) Whereas data-processing systems are designed to serve man; whereas they must, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably the right to privacy, and contribute to economic and social progress, trade expansion and the well-being of individuals.’
- (225) Recitals (7)–(8) emphasize the need to approximate the national laws of Member States to ensure the free cross-border movement of personal data, yet the Directive makes it abundantly clear that the Member States should strive to improve the protection currently provided by their legislation. Recital (10) goes as far as to state that the object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy, which is recognized both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the general principles of Community law; for that reason, the approximation of those laws must not result in any lessening of the protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community.
- (226) Thus, the fact that the Privacy Act extends the scope of the legislation to all data processing and control in the territory of Hungary that relates to the data of a natural person, whether the processing is fully or partially automated, or it is done manually in a structured or unstructured form, provides a higher level of protection for natural persons, which, however, cannot be considered to be contrary to the objectives of the Directive outlined above.
- (227) This opinion of the Authority is also corroborated by the judgment of the European Court of Justice in Case C-101/01²¹, in which the Court emphasized that the measures of Member States to ensure the protection of personal data must be consistent both with the provisions of Directive 95/46 and with its objective of maintaining a balance between freedom of movement of personal data and the protection of private life, the Court however highlighted: ‘nothing prevents a Member State from extending the scope of the national legislation implementing the provisions of Directive 95/46 to areas not included in the scope thereof provided that no other provision of Community law precludes it’.
- (228) Thus, taking into consideration the fact that the Hungarian legislature has appropriately implemented the relevant provisions of the Directive, the Directive has no direct effect, and the Central Organization cannot therefore refer it. On this account,

²¹ <http://curia.europa.eu/juris/document/document.jsf?docid=48382&doclang=HU>

Sections 2 (1) and (2) of the Privacy Act apply, i.e. its scope extends to all data processing and data process activities undertaken in Hungary relating to the data of natural persons, and the Act concerns both data processing and data process carried out by wholly or partly automated or manual means, regardless of whether the data set is structured or unstructured.

(229) The Authority also wishes to note that in its decisions issued—as stated in its opinion on the introduction of Google Street View in Hungary, to which the CHS Central Organization referred to in its statement of 24 April 2017—it refers to the direct effect of the Directive, however, not in general but to Article 7 (f), the legal basis of data processing, grounding itself on the judgment of the European Court of Justice in Joined Cases C-468/10 and C-469/10.

(230) **2.1.3** The Authority does not substantiate the statement of the CSH Central Organization according to which the contents of PC Folders, Ethics Folders, Staff Member Folders, and Student Folders constitute an unstructured set of data. The data contained therein is duly structured because of the following:

- the data collected from the data subjects are sorted by types of folder;
- the individual types of folder are stored by type and in alphabetical order in separate rooms (e.g. HCO Staff Office, PC Folder Store, Central Registry, etc.);
- the same types of document are stored in each folder, and are sorted in chronological order;
- the individual folders contain summary documents that help to make searches in folders;
- statements of consent by data subjects are kept in separate folders, in alphabetical order, which also ensures easy search for personal data.

(231) **2.2 The Competence of the Authority—the Right to Proceed**

(232) When initiating and conducting the proceedings, the Authority was aware of the fact that the Church of Scientology in Hungary and its predecessor was registered as a religious association. This circumstance however did not affect its procedure and examination, because it was an organization controlling personal data that it launched the enquiry against. In this regard, the data controller repeatedly referred to the protection of the seal of confession.

(233) Section 8 (1)–(2) of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (the FCR Act) says: *‘(1) The State may neither operate nor establish any organ for controlling or monitoring religious communities.*

(234) *(2) No state power may be used to enforce decisions based on the principles of faith, the internal laws, bylaws, or the rules of organization and operation of a religious community, or other rules equivalent to them together (hereinafter referred to as “internal rules”); public authorities may not examine such decisions. Public bodies may not modify or override decisions made by a religious community based on internal rules, and they shall have no competence to adjudicate disputes arising from internal legal relationships not regulated by rules of law.’*

(235) The Authority emphasizes that it was not the religious beliefs of the Church and their various aspects that it examined, neither was this its purpose. Nor did it have the opportunity to do so because the Church did not provide the information to the Authority for the very reason that it could not be examined by the Authority as a secular institution, and that, in its Decision 4/1993, the Constitutional Court also stated that it

inevitably follows from the right to freedom of thought, conscience and religious belief (conviction) that the state is obliged not to judge the truthfulness of a religious belief or conviction of conscience.

- (236) The Authority accordingly carried out only an examination of data protection, that is, how far the data processing carried out by the Church meets the requirements of the Privacy Act. According to the opinion of the Authority, it did have the powers for this investigation, due to the following reasons. The Constitutional Court deems the right to human dignity as a formulation of 'general personality rights'. Modern constitutions and constitutional court practice commonly identify personality rights by way of their various aspects, such as e.g. the right to freedom of personal development, the right to freedom of self-determination, general freedom of action, or the right to privacy, but this set also includes the freedom of religion and its two components: the practice of religion and action according to conviction.
- (237) Freedom of religion is therefore closely linked to the right to human dignity, as are the rights to privacy and to the protection of personal data, which latter is a somewhat limited category from certain respects. Given that the protection of both fundamental rights arises in the current case, account must be taken of the relationship between them.
- (238) AB 4/1993 Decision also stated that the neutrality of the State in relation to the right to freedom of religion does not mean inaction. The State must, where appropriate, ensure the protection of other fundamental rights against religious freedom.
- (239) This also arises from the provisions of the Fundamental Law of Hungary. Article I (1) states: *'The inviolable and inalienable fundamental rights of MAN shall be respected. It shall be the primary obligation of the State to protect these rights.'* This same Article (in Section 3) also stipulates: *'The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right.'*
- (240) In the present case, therefore, the freedom of religion and the right to the protection of personal data stand opposed to each other. The Authority analyses in detail the circumstances of the data processing in subsequent parts of the Decision, but it must already be emphasized here that the Church, by essentially failing to provide information about the data processing it carries out for various purposes, or by providing inappropriate information thereof, has already raised the issue of the excessive limitation of the right to the protection of personal data, because one of the most important constitutional requirements of the right to the protection of personal data laid down by Article VI (2) of the Fundamental Law of Hungary—as expounded by the Constitutional Court AB Decision 15/1993—is that *'everyone should be able to track and control the entire path of data processing, that is, everyone has the right to know who uses his or her personal data, and when, where, and why so'*.
- (241) Failing to provide appropriate information and possessing extremely large amounts of data, the Data Controllers, the Church, acquire a 'dominant informational position', the use of which violates the right of data subjects to the protection of their personal data, their right to informational self-determination, as well as their rights to human

dignity within the meaning of Section III.1 of AB Decision 15/1991 (IV.13)²². It can therefore be deduced in this case—as the Authority analyses in detail in the following sections of the Decision—that the Church, referring to freedom of religion and to the provision that the State has no right to examine the internal religious activity of the organization, carries out data processing that violates the rights of the data subject to the protection of personal data.

- (242) It is all the more important to emphasize this in regard of the case, further detailed below, when the Church processes the personal data of persons who otherwise have no connection with the organization, and do not follow its beliefs. To argue in this respect that the Authority is limiting the right to freedom of religion is irrelevant; it is the right to freedom of religion itself that restricts—unnecessarily—the right of third parties to the protection of personal data.
- (243) As a consequence of the aforementioned, the Authority takes the view that, as an organ exercising public authority and executing proceedings for data protection, the Authority cannot waive its claim to ascertaining the lawfulness of data processing when information is recorded in writing or electronically in connection to data processing in Hungary. Otherwise, data processing and documents could be withdrawn from under the effect of data protection legislation and ultimately the possibility of control by limitless referencing. Such an argumentation would easily entail the weakening of the protection of personal data. Under the Fundamental Law of Hungary, the function to supervise general data protection and to protect rights can only be restricted by rules of the level of legislative acts, and the internal norms of a religious association—nor bearing on its religious life—obviously cannot restrict the competence of the Authority in this respect.
- (244) During the proceedings, the Church repeatedly referred to the fact that the documents seized and taken custody of by the Authority contain personal data and information about the believers that are secrets of the confessional. The Authority has no competence to judge whether these personal data and information are to be classified as secrets of the confessional, but notes that, according to the definition of *Pallas Nagy Lexikona* [Pallas' Great Encyclopaedia, 1897], confession [cf. *gyónás, fűlbegyónás*]²³ in its everyday meaning does not include the recording and registering of

²² '[The data controller] obtains knowledge of personal data in its totality and context. This renders the data subject defenceless and his privacy transparent, and creates unequal communication conditions, where the data subject cannot know what the data processor knows about him or her. The "personality profile" assembled from data naturally removed from the original context is a particular violation of personality rights, and its avoidance is a basic aspect of assessing the lawfulness of data processing, but it is a result of data processing with a wide but undefined scope of data collection. As a result, such data processing violates human dignity.'

²³ *Pallas Nagy Lexikona* defines the concept of confession as follows: '(confession) literally all kinds of avowal; in the Christian sense, it is a confession of sin together with repentance and the intent to improve which the confessant makes in front of a priest, a confessor, in order to be worthy of taking the supper of the Lord. In Catholic doctrine, it is an essential part of the sacrament of contrition or penance. Detailed confession into the ears (*confessio auricularis*) goes back to the times of Christ and the Apostles. According to Calvin, Dalläus and others it started much later, namely at the fourth Lateran Synod under Innocent III. In the teaching of the Catholic Church, the confession of sins committed after baptism is a necessary condition of the forgiveness of sins ordained by God (Trid. can. 6–8). The public or secret nature of confession (auricular confession to the confessor exclusively) is a question of discipline. The Greek Catholic Church follows Catholic practice. The protestants rejected confessing to priests, i.e. auricular confession; they confess their sins only to God [...].'

The entry for the seal of confession reads as follows: '(*sigillum confessionis*) in the Catholic Church, the confessor is obliged to keep secret what confessants disclose to him in confession [...].'

information so gathered. Nevertheless, the Authority refers to Section 71 (1) of the Privacy Act, which provides the following: 'In its proceedings the Authority shall be entitled to process—to the extent and for the duration required—those personal data, and classified information protected by law and secrets obtained in the course of professional activities, which are related to the given proceedings, or which are to be processed with a view to concluding the procedure effectively'. Accordingly, in the opinion of the Authority, to the extent and for the duration required for the successful conduct of the proceedings, it is entitled to know and process the personal data the Data Controller deems secrets of the confessional.

- (245)** Apart from the aforementioned, the Authority also refers to the Decisions no. 19.P.22.800/2006/7 of the Fővárosi Bíróság (Budapest-Capital Regional Court) and no. 8.Pf.20.062 / 2007/6 of the Fővárosi Ítéltábla (Budapest-Capital Regional Court of Appeal), in which the tribunals proceeding declared that the examination of the question whether the E-meter is applied by the Church of Scientology in Hungary, the Plaintiff, for lie detection falls within the competence of the Data Protection Commissioner.
- (246)** As per the argument of the Data Protection Commissioner, the examination of the personal data of data subjects gathered in the use of the E-meter as a lie detector fall within the scope of data protection, i.e. within his competence. This position was shared both by the Fővárosi Bíróság (Budapest-Capital Regional Court) acting in the first instance and by the Fővárosi Ítéltábla (Budapest-Capital Regional Court of Appeal) acting in the second instance, rejecting the Plaintiff's argument that the Data Protection Commissioner, by extending his proceedings to include the E-meter belonging to auditing, the central religious practice of Scientology, it violated the personality rights of the Plaintiff's organization.
- (247)** **3. Data Processing, Joint Data Processing, Data Process**
- (248)** **3.1** Establishing the identity of the data controller is a key issue when examining data processing, since the data controller is responsible for compliance with data protection rules, the activities and circumstances of data processing.
- (249)** **3.2.1** In its letter dated January 20 2017, the CSH Central Organization provided the information that it processes personal and special data provided by its staff members, believers and those interested in Scientology. It presented its data processing as divided into two categories—electronic and paper-based data processing. Accordingly, it records electronically the following:
- CF Folders;
 - INCOMM Accounting and Address Book (also known as Addresso) software;
 - Images recorded by security cameras;
 - Staff Members List;
 - OCA Tests;
 - Data of Book Selling Website;
 - Video recordings of certain meetings.
- (250)** According to its declaration, the CSH Central Organization carries out paper-based data processing apart from the above as follows:
- CF Folders;
 - PC Folders;
 - Ethics Folders;
 - Committee of Evidence records;

- Staff Member Folders;
 - Valuable Documents (VAL DOC);
 - Student Folders;
 - Financial Documents;
- (251) **3.2.2** In order to establish the identity of the data controller, it is first necessary to define the individual types of data processing, in which the identification of the purposes of data processing can provide guidance. According to the Authority, the reviewed data processing activities are linked to four data processing purposes:
- i. The purpose of data processing related to services ministered to believers and to following their spiritual development;
 - ii. The purpose of data processing related to the appointment, aptitude of staff members and the disclosure of information to authorities;
 - iii. Direct marketing purposes;
 - iv. Persons and property protection purpose.
- (252) The data processing indicated in point (i) includes, as stated by the Data Controllers in their declaration of 24 April 2017, all the services, beginner and intermediate religious services as well as training for the ministry, that may be ministered by the CSH Central Organization under the rules of the Church. These services are available to both believers and staff members, and there are many ways of and documents for approving their use, which are detailed in the following sections of the Decision.
- (253) The data processing indicated in point (ii) includes the group of objectives related to the selection, employment and engagement of staff members in the service of the CSH Central Organization.
- (254) Point (iii) includes data processing related to maintaining contacts with believers and the public at large, as well as to providing them sales services (CF Folders, Addresso).
- (255) Point (iv) includes the data processing purpose of storing the images recorded by the security camera system at the headquarters of the CSH Central Organization.
- (256) **3.2.3** Pursuant to Section 3 (9) of the Privacy Act, a data controller is a natural or legal person or organization without legal personality which alone or jointly with others determines the purposes and means of the processing of data; makes and executes decisions concerning data processing (including the means used) or have it executed by a data processor. The phrase 'with others' formulates the possibility of joint data processing.
- (257) The Act defines the concept of data controller in general terms, the purpose of which is to place responsibility where effective influence resides. To determine who qualifies as a data controller in a specific case, a careful consideration of the circumstances of the particular case is required. In doing so, it must be taken into account that a person qualifies as a data controller if the conditions set down in Section 3 (9) of the Privacy Act are met, i.e. the entity is the one that determines the purpose of the data processing, and makes and executes decisions concerning data processing or has it executed by a data processor the entity entrusts.
- (258) In its opinion no. 1/2010 on the concepts of 'data controller' and 'data processor', the Article 29 Data Protection Working Party sets forth the following: 'being a data controller is primarily the consequence of the factual circumstance that a legal entity has chosen to process personal data for its own purposes'.
- (259) In order to establish the identity of the data controller, account should be taken, in particular, of the scope to determine purposes and make decisions. In its opinion no.

03/2013 on purpose limitation, the Working Party emphasized that purpose specification lies at the core of the legal framework established for the protection of personal data. In order to determine whether data processing complies with the law, and to establish what data protection safeguards should be applied, it is a necessary precondition to identify the specific purpose(s) for which the collection of personal data is required. The purpose of the collection must be clearly and specifically identified: it must be detailed enough to determine what kind of operation is connected to the given purpose. Hence, determining the purpose of data processing always results in a data controller capacity.

- (260) The term ‘means of the processing of data’ refers not only to the technicalities of data process involving personal data, but also the manner of the process. The determination of this includes technical and organizational issues the decision on which, even on essential elements the data controller would traditionally and naturally decide, can be transferred to the data processors. Therefore, defining the means of the processing of data—as opposed to its purposes—implies data processing only when the basic elements of the means are defined.
- (261) **3.2.4** Establishing the identity of the data controller—that is, the entity that defines degree of actual influence, the purposes and means of data processing—is particularly difficult in a complex case such as the data processing under investigation, where, on the one hand, it is an international organization, a religious organization operating in several places world over, whose principles, methods and practices laid down centrally regulate all the details of its operation that is concerned, and, on the other hand, it is an organization established in Hungary, independent in every respect of its organization, operating as a religious association, which was not created or established by the international organization as in the case of a business association, but its members established the organization resolved to practice the religion within an organized framework, join the ‘mother Church’, and recognize its supremacy and governing authority.
- (262) As mentioned, determining the purposes and the essential elements of the means of data processing is of paramount importance in establishing the identity of the data controller. Determining the purposes and means can be formulated as answering the questions ‘why’ and ‘how’. Determining the purpose of data processing answers the question ‘why’, why is data processed, who made the decision requiring data processing and defined the purpose for which data processing was intended. Determining the means, the how, of data processing, or, more precisely, determining the essential elements thereof also generates a data controller capacity. This means deciding questions such as what data should be processed, who can access data, when are data to be erased, etc.
- (263) In establishing the identity of the data controller, different circumstances need to be assessed according to the opinion of the Article 29 Data Protection Working Party, such as whether data processing is a result of implied competence or actual influence. The former criterion helps identify the data controller when existing, traditional roles are concerned, which assume certain responsibilities, such as, for example, the employer with regard to employee data, or an association with regard to the data of its members or supporters. Fulfilling these roles therefore also means a kind of functional role that ultimately entails responsibility for data protection. Data processing resulting from actual influence involves the assessment of actual circumstances. In drawing these

conclusions, we can be assisted by certain contractual relations, documents identifying the data controller, but the Article 29 Data Protection Working Party also calls attention to the fact that ‘the terms of the contract are not conclusive in all circumstances because the parties can thereby share responsibility as they see fit’. In case of doubt, other elements can also be taken into account in identifying the data controller, such as, for example, the degree of effective control by a given party, the party’s being known to the data subjects and their reasonable expectations based on this knowledge.

- (264) **3.3** According to the opinion of Authority, determining the purpose of the data processing mentioned in Section 3.2.2(i) and (ii) can be associated with the Church of Scientology in Hungary. For it was the CSH as a religious organization that made the decision, which was founded by natural persons, who resolved to practise the Scientology religion within the framework of their organization, and they thereby recognized the supremacy and governing authority of the ‘mother Church’, and, alongside this, they began to carry out data processing according the principles laid down in ‘the Scriptures’. It can be said, therefore, that it was as an independent legal entity that decided on the ‘why’ of data processing, and, by taking over the data processing practice and methodology developed by another legal entity for its own data processing, it determined the essential elements of the means of data processing.
- (265) In its opinion on the concepts of data controller and data processor, the Article 29 Data Protection Working Party confirms the possibility of ‘pluralistic control’, and addresses the concept in detail. ‘The possibility of *pluralistic control* caters for the increasing number of situations where different parties act as controllers. The assessment of this joint control should mirror the assessment of “single” control, by taking a substantive and functional approach and focusing on whether the purposes and the essential elements of the means are determined by more than one party. The participation of parties in the determination of purposes and means of processing in the context of joint control may take different forms and does not need to be equally shared.’ In the case of a plurality of actors, the actors may be closely related (e.g. sharing all the purposes and means of process) or loosely related (e.g. sharing either the purpose only or the means only, or their parts).’
- (266) During the examination of the roles of the CSH and CSH Central Organization in data processing, the Authority examined the statements of consent it got to know during the proceedings, and found that the identity of the data controller could be not sufficiently clearly identified on the bases of the reviewed documents, the statements of consent and notices, because, in most cases, there is no unambiguous identification of either the purpose of data processing or the data controller, such as in the following cases:
- a) *‘I understand that, in accordance with the purpose of data processing, the Central Organization assembles folders bearing my name, a Student Folder for religious training, a Preclear Folder (PC Folder) for auditing or for spiritual counselling, Ethics Folder for ethics or Scientology judicial procedures. These documents are confidential, and are the exclusive property of the Church of Scientology International (CSI).’*
- ‘I understand that all communications and information transmitted, stored or received by the computer hardware, software, network, Internet connection, electronic mail, e-mail addresses, or other computer and electronic communications and data storage systems of the Central Organization [...] are religious records, and*

are the exclusive property the Central Organization and, in case of certain data, the Church of Scientology International.'

- b) *'I understand and agree that that many Church of Scientology Communities, missions and organizations throughout the world are legally and in all other respects independent of each other, and have only ecclesial ties between them. As a result, the service is subject to the supervision and control of the above-mentioned Org only.'*
 - c) *'I hereby agree to allow my auditing sessions and interviews to be recorded and supervised, the recordings and records made during or in connection with my auditing sessions to be reviewed, and such recordings to be destroyed at the discretion of the Central Organization.'*
 - d) *I acknowledge and agree that my personal data, including my special data (such as medical data), may be processed and stored by the Religious Association of Scientology in Hungary Central Organization as required by the Detoxification Programme until I withdraw this declaration in writing.'*
 - e) *'In the headquarters of the Church of Scientology Central Organization as data processor', and within the same document: 'The processor of the data is the Church of Scientology Central Organization'—Minutes of Document Selection and Destruction Procedure.*
- (267) The wording 'the exclusive property' does not clearly identify the data controller because data controllers do not have any proprietary rights over the personal data of the data subjects, they only process them for a specific purpose and with a legal basis. In other cases, the independence, self-determination and different decision-making powers of the CSH Central Organization are written about, and often, using the impersonal subject, the performer of data controller tasks remains unidentified.
- (268) When establishing the identity of the data controller, the Authority took into account the assessment of circumstances such as the data controller's being known to the data subjects and their reasonable expectations based on this knowledge, or the tasks and roles of the parties involved in data processing. In all the headings of the various statements of consent, pledges and applications, the CSH Central Organization is given, as it is—with exception of two cases—always the CSH Central Organization that approves of such declarations. The role of data controller of the CSH Central Organization is undergirded by the duties and responsibilities arising from the functions it fulfils, that is, the processing of the personal data of the staff, employees, members and supporters of the association, and the data arising from its influence over them and its functions.
- (269) Based on the above, the Authority concluded that both the CSH and the CSH Central Organization are to be considered data controllers in the data processing indicated in Section 3.2 (i) and (ii).
- (270) **3.4** In examining the data processing for marketing purposes, the Authority reviewed the statements of consent used for providing information on such data processing and for obtaining the consent of the data subjects, and which were considered by the Data Controllers as statements of consent. The following information was available on the identity of the data controller:
- a) the online available versions of the Oxford Capacity Analysis tests included the information defined in points 189–190 of the Decision;

- b) the invoices Data Controllers used, the questionnaires they used in public events, online and paper-based types of book selling included no indication of the identity of the data controller; typically, these designated the Church of Scientology, Budapest, or the CSH Central Organization;
- c) the application forms for courses ('Confidential Religious Agreement', 'Religious Services Application Form, Agreement and General Release Declaration' and 'Introductory Scientology Courses Application Form, Agreement and General Release Declaration') provided no information on marketing data processing, but did contain the notices mentioned in section II.3.3 above.
- (271) Based on the above, the Authority—referring to the reasons set forth in section II.3.3 above—found that both the CSH and the CSH Central Organization process data for marketing purposes.
- (272) **3.5** Regarding the persons and property protection purpose, the Authority examined the Rules Concerning the Cameras for Property Protection Purposes (hereinafter 'the Camera Rules'), which provides one single piece of information or notification on the data controller: 'visitors acknowledge that cameras protect the property of the Church of Scientology Central Organization, and that any data that comes into the property of the organization through the camera system is a secret; it may not be disclosed to third parties, but it can be used as evidence against them in proceedings'. In the opinion of the Authority, this wording, as pointed out in section I.3.3 above, does not clearly identify the data controller, because data controllers do not have any proprietary rights over the personal data of data subjects, they only process them for specific purposes and with a legal basis.
- (273) In view of the absence of any document or circumstance—aside from the Camera Rules mentioned above—it examined, the Authority identified the CSH Central Organization as the data controller in respect of the persons and property protection purpose (i.e. the data processing related to the electronic surveillance system), accepting the declaration of the Data Controllers.
- (274) **3.6** On the basis of the findings discussed above, the Authority concludes that both the CSH and the CSH Central Organization are joint data controllers in the data processing related to the provision of services, to following the spiritual development of believers, to the applications and aptitude testing of staff members, as well as to the marketing activities. In respect of the data processing related to the persons and property protection purpose, the CSH Central Organization qualifies as the data controller.
- (275) In the course of the proceedings, the Authority did not examine the data controller capacity of the Church of Scientology International and the Continental Liaison Office in Copenhagen.
- (276) **3.7** Reference is made that the CSH Central Organization fulfils a *data processor*²⁴ function in the course of data processing.

²⁴ Section 3 (17) of the Privacy Act states: "'data process" shall mean performing technical tasks in connection with data processing operations, irrespective of the method and means used for executing the operations, as well as the place of execution, provided that the technical task is performed on the data'.

While Section 3 (18) states: "'data processor" shall mean any natural or legal person or organisation without legal personality processing the data on the grounds of a contract'.

- (277) Data process means performing technical tasks in connection with data processing. The legislator however—as opposed to the definition of data processing in Section 3 (10) of the Privacy Act—did not detail by item or example what types of technical tasks belong in the legal concept of data process.
- (278) The existence of the data processor depends upon the data controller, who may decide to assign the data process activities in full or part to an external organization, that is it carries out the data process through ‘a legally independent entity proceeding on its behalf’. The fundamental condition of the capacity of the data processor is therefore, on the one hand, to be a legal subject independent of the data controller and, on the other, to process personal data on behalf of the data controller. The data process activity may be limited to a precisely defined task or be more general and comprehensive. Of the two elements, the greater role is played by the fact that the data processor acts on behalf of the data controller: the data processor’s duty is to carry out the data controller’s instructions, which at least touch the purposes and means of data processing. This does not mean however that the data processor has not a certain—minimal—influence on elements of data processing. The data processor has certain discretion in choosing the technical and organizational parameters of data processing apart from the basic elements of its means.
- (279) The data controller is responsible for the legality of the instructions given to the data processor. Section 23 (3) of the Privacy Act supplements this by stating that the data controller is liable for any damage to the data subject caused by the data processor, and that the data controller is obliged to pay damages to the data subject for the violation of personality rights caused by the data processor. The data controller is only exempted from liability where he proves that the damage to the personality rights of data subject was caused by reasons beyond the scope of data processing and his control.
- (280) Section 10 (3) of the Privacy Act states that the data processor may not make any decision on the merits of data processing, and must process all data entrusted to him solely as instructed by the data controller; the data processor may not engage in data process for his own purposes and must store and safeguard personal data according to the instructions of the data controller.
- (281) Section 7 (2)–(3) of the Privacy Act states that, besides the data controller, the data processor, within his sphere of competence, must implement adequate safeguards to protect data, take appropriate technical and organizational measures, as well as make procedural rules necessary for enforcing the data protection and confidentiality regulations.
- (282) As per Section 10 (4) of the Privacy Act, contracts for the process of data must be made in writing. Any company that is interested in the business activity for which personal data is used may not be contracted for the process of such data.
- (283) According to the opinion of the Authority, taking into account the aforementioned, both the CSH and CSH Central Organization, each having an independent scope of decision making and no data-processor contract having been concluded between them, process data on their own behalf, and, therefore the SCH Central Organization is to be deemed a data controller, not a data processor.
- (284) In view of the aforementioned, the Authority, as set forth in the operative part of this Decision, rejected the application of Data Collector I to terminate its legal status as party.

(285) 4. Membership in International Association of Scientologists

(286) The International Association of Scientologists (hereinafter IAS) is the official membership organization a Scientology. Data processing related to membership is separate from the data processing described in section II.3 of this Decision, and the Authority therefore describes it and analyses its lawfulness in this section as follows:

(287) **4.1** The IAS was formed in 1984 with the purpose to unite and advance the Scientology religion and Scientologists in all parts of the world so as to achieve the aims of Scientology as originated by L. Ron Hubbard.

(288) On the basis of the application forms, the publicly available website of the IAS and other IAS-presenting websites operated by Scientologist organizations, it can be stated that the IAS is an unregistered international membership organization of Scientologists, which can be reached at an address in the United Kingdom (Saint Hill Manor, East Grinstead, West Sussex, England RH19 4JY; it is unknown whether this can be regarded as a seat) and at the internationally networked membership offices of the non-profit organization IAS Administrations (4751 Fountain Ave, Los Angeles, CA 90029 USA).²⁵

(289) During the on-site inspection on 7 December 2017, the Authority seized several types of application forms for IAS membership (hereinafter taken together as application forms), some of which were blank, others filled in with personal data by the applicant. According to the notice on the application forms and the declaration of the CSH and CSH Central Organization, the applicant can submit the application by directly sending it to the address on the application form or by handing the application form over to a membership officer of the CSH and CSH Central Organization. In the latter case according to the declaration of the CSH and CSH Central Organization, the CSH and CSH Central Organization *'on behalf of the IAS, collects and sends the application forms without examining and copying them'* on to the IAS.

(290) The three different types of application form are as follows:

(291) **4.2.1** The first type of document is called 'International Association of Scientologists—Application for Membership', which is to be filled in with personal data (signature, first and second name, gender, address, city, postal code, country, e-mail address, home phone, office phone, mobile phone, org/mission, spoken language, Church membership/staff membership/Sea Org membership qualification, IAS membership number, auditing level, training level, type of membership (annual/lifetime), relation to payer, data concerning payment of membership fee, e.g. if payment is made via credit card, its number, expiration date, CID / CVV code, signature, etc.). With respect to IAS, the application form only gives the title of the IAS website (www.iasmembership.org), it does not indicate the IAS address, that can only be found on the website given. The application form must be sent to the IAS Administrations (address given: 4751 Fountain Ave, Los Angeles, CA 90029 USA) or handed over to a membership officer. According to the notice on data protection on the application form, the data provided will be stored in the secure database of IAS Administrations in Los Angeles. By filling in the form, the data subject also agrees to allow the data given to be transferred for the purposes indicated to other persons belonging to the Church of Scientology who, on behalf of IASA, are commissioned to *'Request the submission of further information on Scientology'*. The notice does not include most of the components of information provision under Section 20 (1)–(2) of the Privacy Act: apart from the purpose of data processing (administration and marketing), it does not provide

²⁵ <https://www.iasmembership.org> <http://www.iasadministrations.net/memoffs.html>

clear, accurate information on other facts related to data processing. On the basis of the data protection notice, sending the application means that the personal data of the data subject may be transmitted to any organization associated with the Church of Scientology around the world.

- (292) **4.2.2** The second type of application form is the ‘International Association of Scientologists—Application for a Free Six-month Membership’; the range of personal data it requires is the same as given above, but obviously does not include information about the payment of the membership fee. The application form must be sent to IAS Administrations (address given: 4751 Fountain Ave, Los Angeles, CA 90029 USA) or handed over to a membership officer. The prior information of the data subject in the notice in the application form, apart from stating the purpose of the data processing (administration and marketing), is incomplete under Section 20 (1)–(2) of the Privacy Act, qualifying the local Church or mission from the point of view of IAS as an ‘intermediary or processor’ for the purposes of collecting and transmitting data on the application form.
- (293) **4.2.3** The third type of application form (‘Membership Application’) does not require the provision of personal data exceeding those mentioned above; the application form is to be sent directly to the IAS (address given: Saint-Hill Manor, East Grinstead, West Sussex, England RH194JY), and it includes no notice on data processing and protection.
- (294) **4.3** The Authority reviewed the application forms described above, and requested information on the circumstances of the data processing, but the CSH and CSH Central Organization did not provide information as to which organization is to be considered the data controller and the data processor with regard to the data collected for the IAS more precise than the declaration referred to.
- (295) With regard to IAS Administrations, on the basis of the publicly available website²⁶ of the organization, the Authority found the following: the organization called IAS Administrations acts as a non-profit entity with the task of providing services to IAS members. The organization forms a multi-continental network the elements of which are incorporated as companies under the law of a state (e.g. MEMBERSHIP SERVICES ADMINISTRATION [UK] Ltd.), membership offices (e.g. MEMBERSHIP OFFICE, CANADA), and ‘branch offices’ (e.g. IASA WESTERN UNITED STATES BRANCH OFFICE, 1311 N. New Hampshire Ave. Los Angeles, CA 90027). Within the organization of IAS Administrations, neither the relationship between the referenced elements nor their ownership/control relationship can be studied in the lack of public sources and or on the basis of the information available to the Authority. It cannot be ascertained whether the IAS Administrations and its (member) organizations are to be considered as data controller or data processor for the purposes of data processing and data process as discussed in this section, or whether a joint data controller capacity can be determined with regard to the IAS. However, the fact that, in the light of available information, IAS Administrations plays a prominent role in respect of data processing and data transfer related to IAS it is justified to deem a joint controllership in conjunction with IAS because IAS Administrations is likely to have a significant influence on determining the means of data processing.
- (296) According to the course of the application described in the application forms, the application forms are also forwarded to the United States of America—that is to a third

²⁶ <http://www.iasadministrations.net/memoffs.html>.

country within the meaning of the Privacy Act—addressed to IAS Administrations, and, on the basis of a declaration made on the application form of the data subject, his or her personal information may be forwarded to any member organization of the Scientology Church worldwide, that is to a third country, too. As regards the transfer of data to the United States of America, the Authority notes that this country and the recipient of the data, during the period examined, were not a country and an organization providing an adequate level of protection of personal data under Section 8 (2) of the Privacy Act.²⁷

(297) The role of the CSH and CSH Central Organization in data processing is also to be examined. One of the first steps in the ‘Bridge’ programme of religious services provided by the CSH and CSH Central Organization is the completion of the ‘Detoxification Programme’; as a precondition of this, the Data Controllers prescribe IAS membership. According to rubric 1 (1) of the form ‘Detoxification Programme Start—Transfer Sheet’, before the detoxification programme is started, the Registrator must check that the person has a valid IAS membership: if the data subject is not a member, the Registrator must ensure IAS membership is taken up or renewed. Due to the above, both the CSH and the CSH Central Organization are data controllers in the data processing because by making the statement of consent to data processing, that is the data processing belonging to IAS membership, compulsory for using the services they provide, they become data controllers.

(298) This practice does not meet the requirements of the Privacy Act in several respects.

(299) The legal basis of data processing under Section 5 (1) a) of the Privacy Act is consent in both cases of data processing. Under Section 3 (7) of the Privacy Act, the concept of consent is made up of four elements: that it is freely given, it is explicit, specific, and informed. In addition, if the legal basis of data transfer to a third country is the data subject’s consent, it must be explicit under Section 8 (1) of the Privacy Act.

(300) Regarding the processing and transmission of data related to the application forms, the Authority holds that the data processor, as a matter of principle, cannot refer to the data subject’s consent as the legal basis of data processing, because the voluntariness of giving consent cannot be established due to the fact that the data controllers, as mentioned, require it as a condition of the services they provide. With respect to data processing and transfer related to the valid IAS membership, the data subject does not actually have the freedom of choice in giving consent, as he or she cannot start the ‘Bridge’ programme until consenting to the data processing and transfer that otherwise do not constitute parts of the use of the services or trainings included in the ‘Bridge’ programme.

(301) One of the most important components of the validity of consent is the free will of the data subject, which is realized only when the data subject has genuine choice. In the opinion of the Authority, in the case of data processing based on consent where data processing is interdependent—i.e. where data processing occurs only provided the data subject gives consent to another data processing—free choice is not ensured as a main rule. Accordingly, free choice is not ensured in the event that the provision of a service and related data processing is conditional on consent to IAS membership.

(302) In the opinion of the Authority, the requirement of the explicitness of giving consent is likewise not met in the data transfer to third countries, because of the following reasons:

²⁷ In the examined period, the organizations that could be linked to IAS Administrations did not even have Safe Harbor or Privacy Shield certificates.

(303) The conditions of data transfer to third countries in the Privacy Act are based on Articles 25–26 of the Data Protection Directive²⁸. With regard to the transfer of data to a third country, the requirement of explicit and unambiguous consent of the data subject is provided in Article 26 (1) (a) of the Data Protection Directive.

(304) This provision of the Data Protection Directive was analysed in a 2005 Work Document by the Article 29 Data Protection Working Party.²⁹ In respect of consent, the Working Party emphasized four factors:

- Consent constitutes a positive act, and *'excludes de facto any system whereby the data subject would have the right to oppose the transfer only after it has taken place: specific consent to a transfer must genuinely be required for the transfer to take place. Any doubt as to whether consent has really been given would make the derogation inapplicable.'*
- Consent must be given freely: *'consent given by a data subject who has not had the opportunity to make a genuine choice or has been presented with a fait accompli cannot be considered to be valid'.*
- Consent must be explicit, that is *'to constitute a valid legal basis for a possible transfer of data, the data subject's consent must be specifically given for the particular transfer or a particular category of transfers in question'.*
- Consent must be informed: *'The information given to data subjects must also include the specific risk resulting from the fact that their data will be transferred to a country that does not provide adequate protection. Only this information will enable the data subject to consent with full knowledge of the facts; if it is not supplied, the derogation will not apply.'*

(305) The first three factors are, in essence, the general requirements for the consent, and a more detailed discussion of this is contained in the Article 29 Data Protection Working Party opinion 15/2011 on the definition of consent (WP 187, hereinafter 'Opinion No 15/2011')³⁰. However, the fourth criterion is a special requirement that applies only to data transfer to another country based on the explicit consent of the data subject.

(306) Taking into account the opinion set forth in the Working Paper, data transfer within the meaning of Section 8 (1) (a) of the Privacy Act indispensably requires that the data subject clearly declare that he or she has understood the risks of the transfer, and that, knowing this, he or she agrees to the transfer of his or her personal data. Data transfer is lawful when the data controller explicitly informs the data subject that his or her data will be transferred to a country that does not ensure an adequate level of protection of personal data, and the data subjects give their clear, unambiguous and free consent for the transfer of data in this knowledge. In the case of applications forms for IAS membership, it can be clearly stated that neither the explicit provision of information discussed above nor the freedom, the explicitness and the informedness of the consent of the data subject can be ascertained. According to the practice of the Authority,

²⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

²⁹ Working document on a common interpretation of Article 26(1) of Directive 95/46/EC of 24 October 1995 (WP 114) http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2005/wp114_en.pdf.

³⁰ WP187 http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2011/wp187_hu.pdf#h2-9

consent to data transfer must be separate from a 'general consent' to data processing, which is not fulfilled in any of the groups of cases.

- (307) Information available to the Authority does not indicate that, as regards the transfer of data concerning IAS membership, the data controller wishes to refer to Section 8 (1) (b) of the Privacy Act as the legal basis for the transfer of data. Nevertheless, the Authority examined the theoretical possibility of applying Section 8 (1) (b) and 8 (2), but it could not establish this on the basis of the information available.
- (308) **4.7** To summarize the above: based on the information available it can be stated that the CSH and CSH Central Organization have shaped a practice in which they, violating the conceptual elements of consent as a legal basis within the meaning of Section 3 (7) of the Privacy Act, require another data processing as a condition of using their services (e.g. detoxification), as a result of which personal data are provided by the data subject upon the provision of prior information not meeting the requirements prescribed by Section 20 of the Privacy Act, and these personal data are transferred by the Data Controllers to the United States of America, a third country within the meaning of the Privacy Act that does not ensure an appropriate level of protection of personal data. These personal data may then be transferred to further countries—to organizations or persons belonging either within the IAS and the IAS Administrations network or within the larger circle of the Church of Scientology—in such a way that the data subject cannot oversee the further fate of his or her personal data, undermining the possibility of effectively exercising his or her rights. Based on the information available, no valid legal basis can be established for data processing and transfer. In addition, it can be stated that these data processing and transfer operations affect a very wide range of people—virtually all users of the religious services ministered by Scientology—because the completion of the 'Detoxification' programme, which requires IAS membership, is a prerequisite for the use of even the beginner level religious services of the 'Bridge' programme.
- (309) The Authority considers it especially detrimental that, if payments are made via credit cards, their numbers, expiry dates, CID/CVV codes and the signatures of the credit card holders are recorded and transferred in the case of two types of application form, enabling the abuse of credit cards. In the opinion of the Authority, this method of payment can by no means be compatible with the requirements of data security as prescribed by Section 7 of the Privacy Act.
- (310) On the basis of the above, the Authority has found that the Data Controllers infringed Sections 3 (7), 5 (1) a) and 20 (2) of the Privacy Act and the requirements of data security under Section 7 and the conditions of data transfer under Section 8 of the Privacy Act.
- (311) **5 Data Processing in Staff Member Folders**
- (312) **5.1** The lawyer representing the CSH and CSH Central Organization informed the Authority in a reply letter dated 24 April 2017 that records of Church volunteers, their production and their qualifications are kept. These records are placed in the Staff Member Folders, which exist only in paper-based format. These paper-based Staff Member Folders are stored in alphabetical order in the registry, and no searches can be performed between them. According to his statement, there are no data collected or recorded with regard to the processing of Staff Member Folders, and the Folders are stored in the registry at the headquarters of the CSH Central Organization.

- (313) In their opinion stated, these folders qualify as unstructured data files within the meaning of Recital 27 of the Data Protection Directive because they do not contain or link to any system that ensures access to personal or special data. In earlier sections of this Decision, the Authority set forth its opinion on this argument and the applicability of the Data Protection Directive, which it continues to maintain with regard to the Staff Member Folders.
- (314) According to the statement made on 20 January 2017 by the legal representative of the CSH Central Organization, the Staff Member Folders contain employment agreements, various forms, records, interviews, and tests required for qualification. Furthermore, the folders store different holiday request or leave documents. Some of these documents are packaged for the purposes of promotion or relocation. In addition, the folders also include the data necessary for the legal registration of the staff members.
- (315) According to the statement made on 5 July 2017 by the Church, applicants for staff membership first appear at interviews, where they are given general information about the organization.
- (316) According to the reply letter of 5 July 2017, the following procedure is used when applicants to become staff members:
‘Step 0: The applicant fills in the document called **“Qualification Checklist”**. The purpose of the document is to give the person concerned the ethical standards for qualification purposes. Legal basis for data processing: voluntary and informed consent [...]
Step (1): The person signs the [...] so-called **„Clear Planet Commitment Pledge”** statement.
Step (2): The person receives further information.
Step (3): The person signs the **„Application Form for Religious Persons”** document [...]
Step (4): The person finally signs the contract called: **„Pledge of Religious Commitment and Application for Religious Service”** with its two annexes: **„Pledge of Religious Commitment and Confidentiality”** and **„Pledge of Religious Loyalty”**.’
- (317) The Authority however, has, by way of seizure, obtained the ‘New Staff Admission—Transfer Sheet’, which includes the process of recruiting staff, and according to which applicants are required to fill in the following questionnaires that are relevant to data protection:
- ‘Qualification Checklist for Religious Persons’,
 - ‘Application Form for Religious Persons’,
 - ‘A–J Sources of Trouble Meter Check’
 - ‘HCO WW Security Form 7A’,
 - ‘Pledge of Religious Commitment and Application for Religious Service to the Religious Association of Scientology Central Organization’.
- (318) Comparing the documents seized and taken custody of by the Authority and the statement made on 5 July 2017 by the Data Controllers, a contradiction between them can be observed because, according to the ‘New Staff Admission—Transfer Sheet’, applicants are required to fill in further documents.
- (319) Moreover, staff members of the Authority found, among documents seized and taken custody of, one called ‘Medical Questionnaire’ that requires the entry of data concerning the medical condition of the applicant.

- (320) Apart from these questionnaires, the 'Life History Form' is required to be filled in by—according to their statement—the 'crew members', top leaders, applicants for executive positions.
- (321) 5.2 The 'Life History Form'**
- (322) **5.2.1** According to the statement made on 24 April 2017 by the Data Controllers, the 'Life History Form' is designed to screen aptitude for a position and meeting the goals set by the Church's internal rules. As their statement put it, different positions require different levels of ethics to be achieved, where levels of ethics are screened according to the internal norms of the Church. A further purpose of the questions is to screen bad faith and malignance towards the Church. Other aptitude questions may be concerning medical fitness, which is also an internal requirement.
- (323) According to the statement made on 5 July 2017 by the Data Controllers, the form is intended to determine whether senior executives meet high ethical standards along with the expectations of the Church of Scientology. As per internal rules of the Church, the questionnaires are to be completed by applicants intending to join the Sea Org or in the case of those Church positions where a person's higher integrity and higher ethical standards are required. A folder may, in certain cases, include the questionnaire completed several times depending on how many times the data subject has applied for an executive position because he has to complete it for every position.
- (324) At the beginning of the questionnaire, there is a notice referring to only the questionnaire and a statement of consent that defines the statement of consent as the legal basis of data processing. The statement also refers to the Data Protection Directive as being the applicable law.
- (325) According to their statement made on 24 April 2017, the completion of the questionnaire is done electronically, and the responses are contained in a separately generated report in RPT format, and its printed version is placed in the given Staff Member Folder.
- (326) At the personal hearing conducted on 30 June 2017 with the assistance of a forensic informatics expert, the Authority had the opportunity to see how the questionnaire is completed electronically on the laptop of the organization used for this purpose. According to the statement of the legal representative of the CSH Central Organization, this is the only laptop which the programme is exclusively installed on. Taking also into account the expert's opinion, the relevant experiences of the hearing are as follows:
- (327) The 'Life History Form' [...] is completed by the applicant for a given position with the help of a filling-in programme provided to the CSH Central Organization. In the course of filling in, the material entered can be saved [...]. According to the statement of the legal representative, the file automatically erases itself after 24 hours. In this regard, the forensic expert found that, in the period of examination (two weeks) the file did not erase itself automatically either upon exiting the programme or later. According to the forensic informatics expert, technically, an external application could carry out the deletion, but he found no trace of such the laptop examined though it could not be ascertained without doubt that the laptop had no application with such a function. All in all, the forensic informatics expert stated the [...] file is highly unlikely to be deleted automatically within 24 hours of its creation.

(328) The file [...] so made can be opened in Microsoft Word, can then be saved in .DOC format, and so the 'Life History Form' can be printed out in its entirety and placed in the given Staff Member Folder, a copy of which can be read in Annex I/1 of the Decision.

(329) According to the statement, questionnaires are kept only in paper-based format in the given Staff Member Folder. However, this assertion is contradicted by the fact that the staff of the Authority found a telex correspondence among the seized documents from which it could be established that an [...] electronically saved and stored file was sent to the person judging the application. According to the documents available to the Authority, an official of the CSH Central Organization, whose duty was to set and comply with the priority order of the vacant positions to be filled in, sent a telex message to cross-check data for the further training of the data subject. For this, the official requested the sending of the file containing the completed 'Life History Form' [...]. The telex message was copied to the representatives of the international and European organizations. The staff of the Authority found two paper-based 'Life History Forms' in the folder, one dated 13 February 2013 and the other 6 November 2015. Accepting the statement of the CSH Central Organization that all 'Life History Forms' can be found in the Staff Member Folder concerned, the Authority interprets this to mean that either the questionnaires are also stored electronically and the stored version, the 2015 one in this case, had to be corrected, or not all the questionnaires were placed in the folder. In the latter case, in order for the [...] file to be deleted after a period of 24 hours, a printed questionnaire made on 12 or 13 January 2016 should also have been in the folder. It also follows that the statement by the legal representative of the CSH Central Organization that files are deleted twenty-four hours after their creation is unfounded.

(330) The Authority also notes that the 'Life History Form' presented during the personal hearing held on 30 June 2017 included a questionnaire consisting of 122 questions. By contrast, the staff of the Authority found 27 'Life History Forms', all of which consisted of 130 questions, in the documents seized and taken custody of previously. During the personal hearing held on 30 June 2017, the legal representative of the CSH Central Organization stated that the 2016 version of the questionnaire with 122 questions is the one used. By contrast, during that personal hearing, the Authority seized and took custody of documents among which 'Life History Form' version number 2005 and dated 2017, which had the earlier 130 questions. In other words, there was a contradiction between the statement of the legal representative and the experience of the Authority because, as opposed to the statement, the questionnaire with 130 questions is likewise used. In addition, the Authority also notes that its staff also found the 'Life History Form' with a 130 questions in the folders seized and taken custody of at earlier on-site inspections. For this reason, the Authority makes its findings on the questionnaire with 130 questions, adding that the Authority found other types of 'Life History Form', e.g. a Hungarian translation of it, which it took custody of during the on-site visit held on 13 June 2017 and the personal hearing held on 30 June 2017. However, this Hungarian questionnaire was stated to be an unofficial translation, a text of a certain person made for his own use, or it may have been given to those whose English is less fluent. Whichever of the 'Life History Forms' is concerned, however, none of them meet the data protection requirements, and the Authority maintains its findings with regard to all versions the 'Life History Forms'.

(331) In addition, the Authority has found, in the course of reviewing the materials seized and taken custody of, a document in an Ethics Folder according to which the Org/CSH

Central Organization had carried out a survey among staff members in the spring of 2010. According to the document, all staff members received a so-called package containing the OCA test, the Leadership Aptitude Survey, and the 'Life History Form' that the staff members had to complete. The following instructions were given for filling in the 'Life History Form': the staff member received a 'Life History Form' application in English, but the package for those who did not speak English contained a translation of the questions in Hungarian. If someone had already filled in a 'Life History Form', he or she received it on disk and only had to update it, while anyone who had not completed the questionnaire before received the programme with nothing entered. At the end of the process, the completed questionnaires were saved to disk.

(332) All this contradicts the statement that the questionnaires are kept in a paper-based format, and that the file [...] automatically deletes itself twenty-four hours after its creation. Furthermore, based on the aforementioned, there is a Hungarian version of the questionnaire which is used on a regular basis and not meant only for someone's own use.

(333) The 'Life History Form' with 130 questions asks for extremely sensitive data. It is important to note that it contains not only the personal data of the data subject but also the personal data of third parties. The relevant scope of data in the questionnaire is included in Annex I/1.

(334) 5.2.2 Purpose Limitation in Data Processing and Necessity

(335) According to the statement made on 13 June 2017 by the CSH Central Organization during the on-site inspection, which was confirmed by the legal assistance provided by the National Tax and Customs Authority, the organization employs, apart from a few exceptions, its staff members in the framework of service contracts or contracts of employment. The basic rules of service contracts are contained in Act V of 2013 on the Civil Code (hereinafter the Civil Code).³¹ In view of the fact that it does not contain any provisions on data processing, the Privacy Act is to be applied.

(336) In examining the principle of purpose limitation in data processing as prescribed by Section 4 (1)–(2) of the Privacy Act³², the Authority holds that it is to follow the provisions of Decision 15/1991 (13 April) of the Constitutional Court, which states: *'Adherence to the purpose to be achieved is a condition of and at the same time the most important guarantee for exercising the right to informational self-determination. This means that personal data may be processed for precisely a defined and lawful purpose. Every stage of data processing must satisfy the purpose disclosed and officially recorded. The data subject shall be informed of the purpose of the data processing so*

³¹ Section 6:272 of the Civil Code states: 'Under a personal service contract the agent undertakes to carry out the assignment the principal has entrusted to him, and the principal undertakes to pay the remuneration contracted.'

³² Section 4 of the Privacy Act states: '(1) Personal data may be processed only for specified and explicit purposes, where it is necessary for the exercising of certain rights and fulfilment of obligations. The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness.

(2) The personal data processed must be essential for the purpose for which it was recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve its purpose.'

that he or she can judge the effect of the data processing on his or her rights, make a well-founded decision on providing the data and be able to exercise his or her rights in the event of divergent use. For the same reason, the data subject must be informed on the changes of the purpose data processing. Without consent by the data subject, data processing with a new purpose can only be lawful if it is permitted by law with regard to defined data and controller.'

- (337) According to the decision of the Constitutional Court, beyond the definition of purpose, the lawfulness of the purpose is likewise required, that is, data processing must be directed towards a socially justified purpose, in other words, personal data can be processed solely for the exercise of rights and fulfilment of obligations. It follows from the principle of purpose limitation in data processing that data collection and storage for an indefinite purpose, for 'stockpiling' for undefined, future use is unlawful.
- (338) In the opinion of the Authority, although it is not employment relationship within the meaning of Act I of 2012 on the Labour Code (hereinafter the Labour Code) that is in question, all employment, such as those based on service contracts, is governed in terms of the principle of purpose limitation in data processing by Section 10 (1), which provides that: *'A worker may be requested to make a statement or to disclose certain information only if it does not violate his personal rights, and if deemed necessary for the conclusion, fulfilment or termination of the employment relationship. An employee may be requested to take an aptitude test if one is prescribed by employment regulations, or if deemed necessary with a view to exercising rights and discharging obligations in accordance with employment regulations.'* Accordingly, the Authority holds that, even in the case of service contracts, compliance with the principle of purpose limitation requires that data processing be necessary for the conclusion, fulfilment or termination of the legal relationship.
- (339) Data processing due to employment-related legal relations can generally be classified in several ways: as when the processing of certain data is based on law, such as those related to social security, taxation, and health aptitude prescribed by law. Another range of data, which is sensitive from a data protection perspective, is related to aptitude. The employer may define the conditions of aptitude, and has the right to verify this and also the related data. In this area, data processing can be highly variegated, as in measuring qualifications, knowledge of languages, psychological aptitude, and certain skills. A further range of data arises from work duty, such as in assessment, disciplinary offences and punishments. Data processing related to the supervision of employees, the legal basis of which may be the legitimate interest of the employer.
- (340) Consequently, the purpose of data processing may be deemed lawful when it is meant to establish aptitude for a position, in this case a Church position. According to the statement by the legal representative of the CSH Central Organization, the questionnaire is to be filled in for the higher level Church positions mentioned above in order to establishing aptitude. In the view of the Authority, examining aptitude may be a lawful purpose of data processing, but the kind of position should also be taken into account because aptitude criteria conforming to it may be prescribed. This can also be used to determine which personal data may be relevant to or necessary for the conclusion, fulfilment or termination of the legal relationship.
- (341) Section 4 (2) of the Privacy Act provides that personal data processed must be essential for the purpose for which it was recorded, and it must be suitable to achieve

that purpose. Personal data may be processed to the extent and for the duration necessary to achieve its purpose. This is the so-called necessity principle, also known as the principle of data minimization. It follows from this principle that it is necessary to examine whether the data specified by the controller is genuinely necessary if the purpose of the given data processing is to be achieved.

(342) Obviously, all employment-related legal relations require the processing of data necessary for the identification of the data subject and due to provisions of law (such as social security and taxation). In other areas, data processing must apply the principles of purpose limitation and necessity.

(343) In the case of the 'Life History Form', only data relevant to the conclusion, fulfilment or termination of the employment-related legal relationship, in this case a service contract, may be processed. Relevant data may be the data subject's education, knowledge of languages, professional experience—in certain cases, religious beliefs. At the same time, in the opinion of the Authority, in the case of so-called 'senior management', e.g. executive positions at the CSH Central Organization, as would be in the case of 'ordinary employment-related legal relationships', the special data—data on health, pathological addiction, criminal personal data, sex life, financial debt, political opinions, party affiliation, trade-union membership, third parties, or relationships with third parties—in the questionnaire are not essential and necessary for establishing aptitude and thus must not be processed.

(344) According to the legal representative of the CSH Central Organization, these data are required because special positions are concerned for which the applicant has to meet certain higher ethical standards. As to what exactly these higher ethical standards are neither, the CSH Central Organization nor its legal representative provided no substantial information to the Authority. In the absence of such information, it cannot be judged whether the so-called higher ethical standards really require the processing of such special and third-party data, and the Authority therefore took into account the information available and established data protection practice. On this basis, according to the opinion of Authority, no administrator, manager or executive position justifies the processing of such sensitive data. In this regard, the Authority also notes that during the examination of the seized documents, it found a filled-in 'Life History Form' for a staff member who applied not for the higher positions mentioned above but to perform other lower-level tasks, such as the so-called 'address officer', which actually involved postal delivery tasks. In the opinion of the Authority, in the case of such or similar positions, the processing of special data and data on third parties is neither necessary nor relevant to the legal relationship.

(345) In their statement of 10 July 2017, the Data Controllers referred to Council Directive 2000/78 /EC, which provides for the equality of churches in labour relations. In their opinion, the Directive also corroborates the fact that churches lawfully require answers to questions such as those in the 'Life History Form'.

(346) The Data Controllers referred to following provisions of the Directive to support the case that, according to the provisions of the Church Law, the internal guidelines of the Church cannot be subjected to examination by a public authority:

- Recital 24 of the Directive states: 'The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that **it respects and does not prejudice the status under national law of churches and religious associations or**

communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity’.

- Article 4 of the Directive states: **‘Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.’**

(347) However, in the opinion of the Authority, the emphasized sections refer to the fact that, first, Member States respect the legal status of religious associations and communities, and that, second, the churches may require the persons working for them to act loyally to their ethos. The Authority also notes that the Directive itself is, in accordance with its title, about establishing a general framework for equal treatment in employment and occupation. Compliance with the Directive is ensured by Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter the Equal Treatment Act). Both the Directive and the Hungarian law provide basically that, because of his or her religious conviction, nobody can be discriminated against in employment. In addition, what also appears in these laws is that, in organizations based on religious conviction, it is not deemed discrimination if the given religious belief is a genuine, lawful and certified occupational requirement for a particular occupational activity. However, account must be taken of the constitutional provisions and principles of the Member States and the general principles of Community law.

(348) However, it differs from this when an organization based on religious conviction lays down conditions of fulfilling a particular occupational activity beyond the requirement of the given religious belief, and it requires personal and third party data to certify meeting those conditions.

(349) In the opinion of the Authority, it cannot be inferred from this that the Directive also corroborates the fact that churches lawfully require answers to questions such as those in the ‘Life History Form’. Furthermore, the aforementioned provisions of the Directive do not support the view that the internal guidelines of a church cannot be subjected to examination by a public authority.

(350) During the personal hearings held by the Authority on 30 June 2017, the legal representative of the CSH Central Organization compared the ‘Life History Form’ to the questionnaire used to monitor unobjectionable lifestyle used for the auditors of the National Tax and Customs Authority. The Authority notes in this connection that, in respect of the public service status of the professional members of the National Tax and Customs Authority and of other law enforcement agencies, Act XLII of 2015 on the Service Status of the Professional Members of Law Enforcement Agencies prescribes unobjectionable lifestyle in the light of the special public service relationship between a law enforcement agency acting on behalf of the State and a member of its professional staff. On the basis of this particular public service legal relationship, a professional member performs his or her obligations arising from a service relationship on the basis of a voluntary undertaking, as a vocation in life, in a strictly hierarchical order, sometimes even risking his life and health, and accepting the restriction of some of his

or her fundamental rights. In this case, therefore, it is the law itself that requires, with a view to the special legal relationship, the processing of special data or data relating to third parties for monitoring unobjectionable lifestyle, which data processing and the conditions thereof are provided by law itself. Furthermore, it is important to point out that the provision of information on third parties is also required by law, and data processing on them can only be carried out on the basis of their consent—in contrast the ‘Life History Form’, in respect of which the Authority found no documents indicating that third parties were informed, that the Data Controllers process their personal data in order to check whether the applicant meets the ethical standards. Third parties have no way of protecting their privacy because they do not know about data collection. Consequently, the Authority no statements of consent in its proceedings with regard to third parties.

(351) The Authority does not therefore dispute that the processing of personal data is necessary for filling positions, but the necessity to process the personal data of data subjects, applicants, and personal data of third parties was not substantiated, and therefore it is unnecessary and irrelevant for the conclusion, fulfilment or termination of the legal relationship.

(352) The Church has therefore violated the principles of purpose limitation and necessity under Section 4 (1)–(2) of the Privacy Act by processing the special data of applicants and the personal data of third parties. It is unnecessary to process special data in order to establish aptitude for positions at the CSH Central Organization, while that the organization processes the personal data of third parties without their knowledge for examining aptitude for positions cannot be regarded as a lawful purpose, and it is also irrelevant for entering into a legal relationship with the applicant.

(353) According to the Authority, the following questions of the ‘Life History Form’ breach the principles of purpose limitation and necessity:

- 1) Basic Information
 - a) Male/Female
 - b) Do you have a passport? If you have one, its number, passport issuing country, passport expiration date. Is this passport invalid or current? (If yes, provide details.)
 - c) Passport Visa:
 - d) Type of passport visa, its number, date of issue and expiry.
 - e) Closest relatives or friends to contact in emergency.
- 2) Have you ever had periods of unemployment?
 - a) Explain what you did during periods of unemployment.
 - b) Time period: ... to:
 - c) What were you doing?
- 3) Do you have any debt with a bank, credit card company or other type of organization?
 - a) Name of organization:
 - b) What type of organization is this:
 - c) How much do you owe:
 - d) What currency is this amount in:
 - e) When did you incur this debt?
 - f) Details:
- 4) Do you have any debt with another person?

- a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) How much do you owe:
 - d) What currency is this amount in:
 - e) When did you incur this debt:
 - f) Details
- 5) Have you ever committed another person to a rest home, psychological, psychiatric or mental institution of any kind?
- a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) When was this:
 - d) Any handlings done on this:
- 6) Have you ever sent someone to a psychologist or psychiatrist?
- a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) How many times:
 - d) What occurred:
 - e) Any handlings done on this:
- 7) Have you any direct family members who have worked for or have been involved with anything to do with an intelligence agency?
- a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) Name of the organization:
 - d) The period of being involved: from... to...
 - e) Activity with the group:
 - f) Is this person still connected with the group:
 - g) Any handlings done on this:
- 8) Have you had an interview or treatment of any kind from a social worker, counsellor, psychologist or psychiatrist?
- a) Period: from:... to:...
 - b) How many times:
 - c) What occurred:
 - d) Any handlings done on this:
- 9) Have you ever been institutionalized in any type of rest home, psychological, psychiatric or mental institution of any kind?
- a) Period: from:... to:...
 - b) For how many weeks:
 - c) What occurred:
 - d) Any handlings done on this:
- 10) Have you ever undergone any electric, insulin or other shock treatment or psychiatric brain operation?
- a) Period: from:... to:...
 - b) How many times:
 - c) What occurred:
 - d) Any handlings done on this:
- 11) Do you have any training of any kind as a psychologist or psychiatrist, did you major in psychology at, for example, a college or university?

- a) Period: from... to:...
 - b) What was included in the training:
 - c) Where was the training:
 - d) Any handlings done on this:
- 12) Have you ever worked for an intelligence agency, or have you ever been involved with something with it?
- a) The name of the organization:
 - b) When: from:... to...
 - c) Your activity with the group:
 - d) Are you still connected:
 - e) Any handlings done on this:
- 13) Are you related to or connected to intelligence agencies either by past history or immediate familial connections? Have you been involved with anything related to it?
- a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) Name of the intelligence organization:
 - d) The period of being involved: ... to...
 - e) Activity with the group:
 - f) Are you still connected with the person:
 - g) Any handlings done on this:
- 14) Have you ever worked for, been a member of or involved with a communist organization?
- a) The name of the organization:
 - b) Period: from: ... to...
 - c) Your activity with the group:
 - d) Are you still a member of the group or involved with it:
- 15) Have you ever worked in, been connected with or involved with the following groups or organizations?
- a) organized medicine
 - b) banking industry
 - c) psychiatry, psychiatrists and psychologists
 - d) media
 - e) government
 - f) PR (public relations) firms
 - g) military organizations
- If yes, the name of the organization:
- Period: from... to...
 - Your activity with the group:
 - Are you still connected to or involved with it:
 - Any handlings done on this:
- 16) Have you ever been connected to a person who was employed by or was involved with a communist organization?
- a) If yes, the name of the person, first and surname:
 - b) The name of the organization:
 - c) Period of being involved with: from: ... to...
 - d) The activity with the group:

- e) Is he or she still connected with the group:
 - f) Any handlings done on this:
- 17) Have you ever been connected to person who worked for, was associated with or involved with the following groups or organizations?
- a) organized medicine
 - b) banking industry
 - c) psychiatry, psychiatrists and psychologists
 - d) media
 - e) government
 - f) public relations firms
 - g) military organizations
- If yes, the name of the person, first and last:
- Persons relation to you:
 - Name of organization:
 - Type of organization:
 - His activity or involvement:
 - Period of being involved: from... to...
 - Are you still connected with this person in the present time:
 - Any handlings done on this:
- 18) Have you ever had a military identity card?
- a) If yes, the name of the organization:
 - b) Type of organization:
 - c) The period of involvement:
 - d) Your activity with the group:
 - e) Are you still connected?
 - f) Any handlings done on this:
- 19) Have you ever served on a high-security section of the government or armed forces?
- a) If yes, the name of the organization:
 - b) Type of organization:
 - c) The period of involvement:
 - d) Your activity with the group:
 - e) Are you still connected?
 - f) Any handlings done on this:
- 20) Have you ever been employed by a health clinic or institution?
- a) If yes, the name of the organization:
 - b) Type of organization:
 - c) The period of involvement:
 - d) Your activity with the group:
 - e) Are you still connected?
 - f) Any handlings done on this:
- 21) Have you ever been employed by the government?
- a) If yes, the name of the organization:
 - b) Type of organization:
 - c) The period of involvement:
 - d) Your activity with the group:
 - e) Are you still connected?

- f) Any handlings done on this:
- 22) Are there any groups or organizations that you have ever been associated with that are not listed above?
 - a) If yes, the name of the organization:
 - b) Type of organization:
 - c) The period of involvement:
 - d) Your activity with the group:
 - e) Are you still connected with it?
 - 23) Are you in litigation with a government tax agency or any government agency?
 - a) If yes, give details.
 - 24) Are you indebted to a government tax agency?
 - a) If yes, give details.
 - 25) Are you in the country illegally?
 - a) If yes, give details.
 - b) Since when are you illegally in the country?
 - 26) Have you ever threatened or demanded a refund or repayment from any church organization?
 - a) If yes, when did it happen:
 - b) Which organization was this:
 - c) What occurred:
 - d) Any handlings done on this:
 - 27) Have you ever received a refund or a repayment from any church organization?
 - a) If yes, when did it happen:
 - b) Which organization was this:
 - c) What occurred:
 - d) Any handlings done on this:
 - 28) Have you ever been wanted by the police?
 - a) If yes, why?
 - b) When was this: from... to...
 - c) Any handlings done on this:
 - d) Are you still wanted?
 - 29) Have you ever been arrested?
 - a) If yes, when was this: from... to...
 - b) What occurred:
 - c) Any handlings done on this:
 - 30) Do you have a criminal record?
 - a) If yes, why:
 - b) When were you put on criminal record:
 - c) Any handlings done on this:
 - 31) Have ever been involved in theft or embezzlement activities?
 - a) If yes, when?
 - b) What did you do?
 - c) Any handlings done on this:
 - 32) Have you ever committed any criminal acts this lifetime for which you could be blackmailed?
 - a) If yes, when:
 - b) What did you do:

- d) Any handlings done on this:
- 33) Are you or have you ever been a newspaper reporter or journalist of any kind?
 - a) If yes, the name of the organization:
 - b) When was this: from... to....
 - c) Your activity with the group:
 - d) Are you currently involved or connected with the group:
 - e) Any handlings done on this:
- 34) Are you an active drug dealer?
 - a) If yes, give details:
- 35) Have you ever dealt in selling illegal drugs, or dealt in any activity connected with illegal drug sales or distribution?
 - a) If yes, when was this period: from... to...
 - b) How many times?
 - c) What occurred?
 - d) Any handlings done on this:
- 36) Have you ever been or are you connected to anyone who has threatened or attacked Scientology? If yes, give complete details:
 - a) If yes, who was involved: first and second name:
 - b) Your relationship with him or her:
 - c) When was this:
 - d) Are you still involved with or connected to this person?
 - e) What occurred:
 - f) What were you involved in with this person:
 - g) Any handlings done on this:
- 37) In present time, are you connected in any way to any person who is engaged in selling illegal drugs, or deals in activity connected to illegal drug sales or distribution?
 - a) If yes, the name of person, first and second name:
 - b) The relationship of the person with you:
 - c) What period was this: from... to...
 - d) What kind of activity was this person involved in:
 - e) Any handlings done on this:
- 38) Have ever attempted suicide? If so, give full details.
 - a) If yes, when did this happen: from... to...
 - b) What occurred?
 - c) How many times:
 - d) Any handlings done on this:
- 39) Have you ever threatened to commit suicide?
 - a) If yes, when did this happen: from... to...
 - b) What occurred?
 - c) How many times:
 - d) Any handlings done on this:
- 40) Have you ever had thoughts of committing suicide?
 - a. If yes, when did this happen: from... to...
 - b. What occurred?
 - c. How many times:
 - d. Any handlings done on this:

- 41) List any illness, accidents, injury, surgery or physical situation you have ever had in chronological order. Include all childhood illnesses (i.e. mumps, measles, chicken pox, etc.) . List the names and places of hospitals and sanatoria you have been committed to. List any corrective surgery you have had and where done.
 - a) Date (use the first field) or period (use both fields)
 - b) from... to...
 - c) Illness, accidents, etc.:
 - d) Name and location of any hospitals, sanatoria:
- 42) Are you currently suffering from any chronic illness or physical condition (include any disease, venereal disease, debility or infestation)?
 - a) If yes, disease, condition, etc.
 - b) When did you contract it?
 - c) Give details:
- 43) Are you suffering from any terminal illness?
 - a) If yes, describe your condition:
 - b) Any handlings done on this or progress:
- 44) Do you currently take drugs/medicine?
 - a) If yes, what drugs/medicine:
 - b) When did you begin to take them?
 - c) What are you taking them for?
- 45) Have you ever taken drugs since being in Scientology?
 - a) If yes, what drug:
 - b) What period: from... to...
 - c) When and in what circumstances did you take them:
 - d) What training and/or what processing did you get before this:
 - e) What training and/or what processing have you gotten since:
 - f) Any handlings done on this:
- 46) Have ever taken LSD or Angel Dust?
 - a) If yes, how many times:
 - b) Over what time period: from... to...
 - c) Any handlings done on this:
- 47) Have ever taken drugs besides those mentioned above?
 - a) Name of drug (list only one drug per entry)
 - b) How many times:
 - c) Over what time period: from... to...
- 48) Have you ever been addicted to drugs or alcohol?
 - a) If yes, when: from... to...
 - b) What occurred:
 - c) Any handlings done on this:
- 49) Have you ever engaged in adultery?
 - a) If yes, when: from... to...
 - b) Who was involved: first and last name:
 - c) What occurred:
 - d) Any handlings done on this:
- 50) Have you ever engaged in homosexual activity?
 - a) If yes, when: from... to...
 - b) Who was involved: first and last name:

- c) What occurred and how often:
 - d) Any handlings done on this:
- 51) Have you ever engaged in perverted sexual activities?
- a) If yes, when: from... to...
 - b) Who was involved: first and last name:
 - c) What occurred and how often:
 - d) Any handlings done on this:
- 52) Give a general 2D history for yourself, including your earliest sexual experience of any kind, when you started dating, and the names of all persons involved, their occupation and these person's relationship to you. Make a chronological list of all persons you have had sexual relationships and what you engaged in. Approximate the number of times you carried on any kind of activity, and note any perversions you engaged in. Who? What? How often? Be as complete as you can.
- a) Over what time period: from... to...
 - b) Who was involved: first and last name:
 - c) The person's occupation:
 - d) The person's relationship with you: friend, child, parent, sibling, employer, employee, patient, physician, spouse, family relation, business partner, auditor, pc, colleague, superior, subordinate, step or foster parent, lender, 2D
 - e) The person's age:
 - f) What occurred and how often:
- 53) Have you ever had a willing or unwilling connection with a squirrel group? (Definition of squirrel group from tech dictionary: 'Those who engage in actions altering Scientology, and off beat practices.')
- a) If yes, the name of the group:
 - b) When was this: from... to...
 - c) Are you currently involved with this group:
 - d) How did you get involved:
 - e) Any handlings done on this:
- 54) Have ever had a willing or unwilling connection with a suppressive group?
- a) If yes, the name of the group:
 - b) When was this: from... to...
 - c) Are you currently involved with this group:
 - d) How did you get involved:
 - e) Any handlings done on this:
- 55) Have you ever been connected to a squirrel or anyone connected to squirrel group?
- a) If yes, first and last name:
 - b) When was this: from... to...
 - c) Are you currently involved with or connected to this person:
 - d) What was this person involved with:
 - e) Any handlings done on this:
- 56) Are you married, single, divorced or separated?
- a) If you are married or have been married:
 - b) Name of spouse: first and last name:
 - c) Maiden name of wife:

- d) When were you married?
 - e) Is he/she a Scientologist?
 - f) Are you married to this person in present time:
 - g) Is this person on staff:
 - h) What is your relationship with this person (spouse or ex-spouse) like:
 - i) If separated or divorced, any difficulties with your spouse/ex-spouse:
- 57) Do you have any children?
- a) If yes, their names: first and last names:
 - b) When were they born?
 - c) Are they Scientologists?
 - d) Describe your relationship with them:
 - e) If you are divorced or separated, do you pay child support?
 - f) If you are divorced or separated, do you have any official obligation to or connection with your children:
 - g) Have any of your children expressed any views opposing Dianetics or Scientology, or have any had any objection to your working with the Church:
 - h) If the children aren't with you, how do you feel about being separated from them:
- 58) Supply the following information about your mother:
- a) Her name: first and last:
 - b) Her maiden name:
 - c) Current address:
 - d) Current occupation:
 - e) Any past occupations:
 - f) Is she a Scientologist?
 - g) What is your attitude towards your mother:
 - h) How does she regard you:
- 59) Supply the following information about your father:
- a) His name: first and last:
 - b) Current address:
 - c) Current occupation:
 - d) Any past occupations:
 - e) Is he a Scientologist?
 - f) What is your attitude towards your father:
 - g) How does he regard you?
- 60) Do you have step or foster parents?
- a) Their names: first and last:
 - b) Current occupation:
 - c) Any past occupations:
 - d) Is he or she a Scientologist?
 - e) What is your attitude towards your step or foster parents?
- 61) Do you have brothers or sisters?
- a) If yes, give their first and last names:
 - b) Current Occupations:
 - c) Any previous occupations:
 - d) Are they Scientologists?

- 62) Do you have any other relatives (grandparents, aunts, uncles, cousins, nephews, nieces)?
- If yes, first and last name
 - Current Occupation:
 - Current address:
 - Are they Scientologists?
- 63) List your friends (even before Scientology) and what kind of relationship you had with them, what kind of work they have been doing and what they are doing at present. Write down what you've been communicating about since you are in Scientology.
- Name(s): first and last
 - What was your relationship with them:
 - What work are they doing now:
 - What is your communication with them since you are a Scientologist?
- 64) Do you have or have had a direct or indirect relationship or family ties to persons who are ex-Sea Org members?
- If yes: first and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 65) Do you have or have you had a direct or indirect relationship or family relationship with persons who are Freeloaders with the Church?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 66) Do you have or have had any direct or indirect relationship or family ties with a person who is an ex-Guardian's Office employee?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 67) Do you have any friends or relatives who have made disaffected statements or have sour views regarding Church activities or Management?
- If yes: name and last name

- b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - c) Over which period: from... to...
 - d) Give details of your relationship:
 - e) Current status of the person:
- 68) Have your parents or family members ever been antagonistic to Scientology?
- a) If yes: name and last name
 - b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - c) Over which period: from... to...
 - d) What happened:
 - e) Any handlings done on this:
 - f) Is this person antagonistic in the present time:
- 69) Have any of your relatives expressed any opinion against Dianetics or Scientology, or do they any objections to your working here?
- a) If yes: name and last name
 - b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - c) Over which period: from... to...
 - d) What happened:
 - e) Any handlings done on this:
 - f) Has this person expressed this opinion or objection in the present time:
- 70) Are you intimately connected with persons (such as marital or familial ties) of known antagonism to mental or spiritual treatment or Scientology?
- a) If yes: name and last name
 - b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - c) Over which period: from... to...
 - d) What happened:
 - e) Any handlings done on this:
 - f) Is this person currently antagonistic to mental or spiritual treatment or to Scientology at present::
- 71) Have any of your family members or close friends expressed scepticism or been critical of Scientology?
- a) If yes: name and last name
 - b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business

relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) What happened:

e) Any handlings done on this:

f) Has this person expressed scepticism or been critical of Scientology in the present time:

72) Are you or have you ever been connected to a person who is not in good standing with the Church of Scientology?

a) If yes: name and last name

b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) Are you currently involved with or connected to this person:

e) What kind of activity did you get involved with this person:

f) Any handlings done on this:

73) Do you have any relationship with criminal individuals, either in present time, or in the past?

a) If yes: name and last name

b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) Are you currently involved with or connected to this person:

e) What kind of criminal activity this person get involved with:

f) What kind of criminal activity did you get involved with this person:

f) Any handlings done on this:

74) Do you have any friends or family members who have relationships with criminal individuals, either in present time, or in the past?

a) If yes: name and last name of friend/family member

b) Relationship of the person to you: aunt, brother, nephew, daughter, father, father-in-law, grandparent, husband mother, mother-in-law, niece, other, sister, son, uncle, wife

c) First and last name of criminal individual:

d) Over which period: from... to...

d) Are you currently involved with or connected to this person:

e) What kind of criminal activity this person get involved with the criminal individual:

f) Any handlings done on this:

75) Do your friends or family members have any contact with criminal organizations, either in the present time or in the past?

a) If yes: first and last name of the friend/family member

- b) The relationship of the person with you: aunt, brother, cousin, daughter, father, father-in-law, grandparent, husband, mother, mother-in-law, nephew, niece, other, sister, son, uncle, wife
 - c) Name of the criminal organization:
 - d) Over which period: from... to...
 - e) Is this person currently involved with or connected to this organization:
 - f) What kind of activity did this person get involved with this criminal organization:
 - g) Any handlings done on this:
- 76) Have you in any way been involved in any financial irregularities (e.g. off policy commissions and bonuses, theft of any org funds, unusual financial favours, unauthorized expenditures, etc.)?
- a) If yes, give details, no matter how small this is:
- 77) Do you have any marital or familial problems?
- a) If yes, give a detailed description.
- 78) Do you live with someone?
- a) If yes, who do you live with: first and last name
- 79) Do you receive other income other than earned by the Church?
- a) If yes, give details
- 80) Do you have your own business outside the Church?
- a) If yes, give details
- 81) List your main obligations (financial or other)
- 82) Are you financially supported by anyone other than yourself, your org or a Sea Org?
- a) If yes, who supports you and what is the arrangement:
- 83) Give a detailed description of your current life, who you live with, who you spend your leisure time with, who you date, etc. What is your daily schedule? What do you do in your rest time?

(354) 5.2.3 Legal basis, Provision of Prior Information

- (355) Each moment of each data processing must have a lawful purpose (Section 4 of the Privacy Act) and a legal basis (Section 5–6 of the Privacy Act). In view of the fact that, in addition to personal data, the ‘Life History Forms’ collect special data, the provisions of Section 5 (2) of the Privacy Act³³ must also be applied appropriately.
- (356) At the beginning of the ‘Life History Form’, there is statement of consent that can be considered as a notice providing information on data processing, which the data subject gives explicit consent to.

³³ Section 5 (2) of the Privacy Act states: ‘Special data may be processed according to Section 6, and under the following circumstances:

- a) when the data subject has given his consent in writing, or
- b) when processing is necessary for the implementation of an international agreement promulgated by an act concerning the data under Point 3 (a) of Section 3, or if prescribed by law in connection with the enforcement of fundamental rights afforded by the Fundamental Law, or for reasons of national security or national defence, or law enforcement purposes for the prevention or prosecution of criminal activities, or
- c) when processing is necessary for the performance of a task carried out in the public interest concerning the data under Point 3. b) of Section 3.’

- (357) In investigating data processing based on consent³⁴, such as the data processing related to the 'Life History Form', not only the existence of the statement of consent, but also that of all conceptual elements of consent must be examined, i.e. it is necessary to examine whether, consent is based on appropriate prior information, whether it is made freely and is explicit, because, in the absence of these, the consent cannot be considered as acceptable, and the processing of data is to be deemed to lack legal basis and to be unlawful. As regards the form of consent, the Privacy Act only provides for written form in the case of special data, but does not do so in the case of non-sensitive data, in which case consent can be given in any form. Nevertheless, in the case of contentious data processing—e.g. data processing in spite of a lack of a statement of consent—the data controller is required to prove the lawfulness of the data processing in the event of proceedings against it because, according to Section 6 (8) of Privacy Act, if there is any doubt, it is to be presumed that the data subject failed to provide his consent. Therefore, it is recommended—from the data controller's point view—that the statement of consent be made in writing.
- (358) **5.2.3.1** Consequently, it is necessary to review the extent to which the conditions for consent are fulfilled. The first step is to review whether the data controller has fulfilled his obligation to provide prior information.
- (359) Based on the permanent practice of the Constitutional Court, one of the most important constitutional requirements of the right to the protection of personal data laid down by Article VI (2) of the Fundamental Law of Hungary is that 'everyone should be able to track and control the entire path of data processing, that is, everyone has the right to know who uses his or her personal data, and when, where, and why so'. This constitutional requirement may be met by way of the prior information provided before data processing begins.
- (360) In addition, the Article 29 Data Protection Working Party, in its opinion 15/2011 on the definition of consent, set forth several findings that govern also the application of the Privacy Act, and thereby stated that informed consent includes 'an appreciation and understanding of the facts and implications of an action. The individual concerned must be given, in a clear and understandable manner, accurate and full information of all relevant issues. This includes also an awareness of the consequences of not consenting to the processing in question.'
- (361) The legislator provided for the requirement of prior information in Section 20 of the Privacy Act. The central element of the obligation of prior and adequate information is laid down in Section 20 (2) of the Act, which lists the basic data processing circumstances that the data controller must provide information on. The data subjects must therefore be informed in a clear and elaborate manner of all aspects concerning the processing, such as the purpose and legal basis of the data processing, of the person entitled to control the data and to carry out the processing, of the duration of the proposed processing operation, of the fact that the data subject's personal data are processed in accordance with Section 6 (5) by the data controller, and of the persons to whom his data may be disclosed. Information shall also be provided on the data subject's rights and remedies.

³⁴ Section 3 (7) of the Privacy Act states: "'the data subject's consent" shall mean any freely and expressly given specific and informed indication of the will of the data subject by which he signifies his agreement to personal data relating to him being processed fully or to the extent of specific operations'.

- (362) It should also be noted that Section 20 (2) of the Privacy Act³⁵ is essentially a list of examples. The legislator requires the data controller to provide information on ‘all aspects concerning the processing’ and then, after the phrase ‘such as’ highlights the circumstances that it considers to be the most important. According to the Authority, the elements of prior information must be supplemented by further requirements under Section 15 (1) of the Privacy Act³⁶. Section 15 of the Privacy Act provides for the right of the data subject to request information on the processing of his or her personal data after the processing commenced. Though Sections 15 (1) and 20 (2) overlap, Section 15 (1) lists several circumstances that cannot be found in Section 20 (2): the scope of the data to be processed, sources of the data, the name and address of the data processor and on its activities relating to data processing.
- (363) Thus, starting out from Section 20 (2) and taking also into account Section 15 (1) of the Privacy Act and, in the given case, further obligations to provide special information, data controllers must provide such prior information as to enable data subjects to recognize the potential impact of data processing on their private sphere.
- (364) With regard to the ‘Life History Form’, it should be noted that it is entirely in English. As a result, the notice at the beginning is also in English. The notice explains that the data subject consents to the processing of personal data relating to his or her activity and behaviour, and to the transfer of those data or the files containing the data to another mission, even if in another country, such as the Mother Church in United States.
- (365) In the notice, the Church indicates that the governing law is the Data Protection Directive, and so cites the definitions of the Directive. On this basis, it defines consent as: freely given specific and informed indication of the data subject’s wishes. The notice also cites the definition of data processing from the Directive.
- (366) Taking these preliminary findings into account, the Authority, comparing the notice at the beginning of the ‘Life History Form’ the requirements under the Privacy Act, holds the following opinion:
- (367) **a)** The information included in the ‘Life History Form’ does not mention, from among the circumstances required by the Privacy Act, the actual purpose of data processing, i.e. aptitude screening for a given position. The questionnaire contains only the following (in Hungarian translation)³⁷: ‘As a staff member of the Church of

³⁵ Section 20 (2) of the Privacy Act states: ‘Before processing operations are carried out the data subject shall be clearly and elaborately informed of all aspects concerning the processing of his personal data, such as the purpose for which his data is required and the legal basis, the person entitled to control the data and to carry out the processing, the duration of the proposed processing operation, if the data subject’s personal data is processed in accordance with Subsection (5) of Section 6, and the persons to whom his data may be disclosed. Information shall also be provided on the data subject’s rights and remedies’.

³⁶ Section 15 (1) of the Privacy Act stipulates: ‘Upon the data subject’s request the data controller shall provide information concerning the data relating to him, including those processed by a data processor on its behalf or according to his/her notice, the sources from where they were obtained, the purpose, grounds and duration of processing, the name and address of the data processor and on its activities relating to data processing, and—if the personal data of the data subject is made available to others—the legal basis and the recipients’.

³⁷ With regard to the Hungarian translation of certain parts and questions in the ‘Life History Form’, the Authority notes that it took into account the Hungarian version of ‘Life History Form’ that it seized and took custody of, and of which the CSH Central Organization stated at the personal hearing on 30 June 2017 that it is unofficial translation, made by a staff member to help those who are less fluent in English.

Scientology, I freely consent to the processing by the Church of data concerning my performance, activity or behaviour.'

(368) >From this definition however, it is not clear to the data subjects what the true purpose of the data processing is. This piece of information was only provided in the course of the proceedings, in a letter dated 24 April 2017 wherein the Data Controllers stated to the Authority: it is to determine the aptitude of an applicant for the position in question.

(369) In reviewing information provided on the purpose of data processing, it is of paramount importance to examine the conformity to the principle of purpose limitation in data processing, since one of the most important guarantees of the right to informational self-determination is the requirement of data processing limited to purpose. In examining the principle of purpose limitation, the Authority holds that the Decision 15/1991 (13 April) of Constitutional Court has to be followed as discussed above. Based on this, the definition in the questionnaire does not provide clear information on the purpose of the data processing. A minimum requirement for a data protection notice is that the data controller precisely state the purpose of the data processing, which must be formulated so that the data subject can clearly identify the activity to which the processing of his personal data is linked. The data controller must ensure that the purpose of the data processing is sufficiently specific and accurate.

(370) **b)** It also does not appear from the notice who exactly qualifies as the data controller. The notice only refers to the Church of Scientology, but gives no further information. In the opinion of the Authority, the name and contact details of the data controller should be given when identifying the data controller. In giving contact details of the data controller, both the postal (official mailing address) and the electronic (e-mail) address must be indicated. The notice must also indicate the address of the website of the data controller, because it is the easiest way to ensure the continuous availability of the data processing notice whereby data subjects can easily and simply obtain information on the circumstances of processing their personal data.

(371) **c)** The notice does not contain any provisions on the duration of data processing. In their letter dated 5 July 2017, the Complainants stated that the duration of the data processing of the printed answers to the 'Life History Form' were to be stored until the fulfilment of the purpose. However, this is not a sufficiently precise definition, since, first, it does not reveal to the applicant for how long his personal data would be processed, and, second, it does not bear interpretation, because of the inaccurate data processing purpose definition discussed above. Information on the duration of the data processing must be given in relation to the purpose of data processing and to the scope of data processed to help the applicant concerned be able to verify the fulfilment of the principle of necessity. The Authority further notes that, insofar as the purpose of data processing is indeed to determine aptitude for a position, the duration of data processing must be adjusted to the judgment of aptitude. That is, when the fitness or unfitness of the applicant for the position has been established, the processing of the data must be terminated, and the personal data must be erased as the purpose of the data processing has ceased.

(372) **d)** Furthermore, the notice does not mention precisely which Church persons, officers or staff members have the right to access the data. According to the statement of the Church described under Section I.7.6.4 above, only the personnel of the HCO can access the Staff Member Folders for HR purposes. According to the letter by the CSH

Central Organization, it is basically the HCO Area Secretary and the Director of Routing and Personnel who have access to the filled-in 'Life History Forms'; however, in the case of special or senior management positions, there may be a need also for a higher level of approval, in which case the report will be accessed by the level leader who makes the decision. The CSH Central Organization also noted that this question could only be answered in detail if it is broken down into specific cases. In the opinion of the Authority, in the case of the CSH Central Organization, it is of utmost importance to define the range of persons entitled to access data as a large number of personal and special data are processed, and unauthorized access to such data may have a significant impact on the informational self-determination and personal privacy of the applicants for the positions. Furthermore, the notice should also provide information on what data processing operations may be performed on the personal data by the persons and organizations that have access to them.

- (373) The Authority considers it particularly detrimental that, in examining the folders, it found 'Life History Forms' both in the PC and the Ethical Folders, which is incompatible with the stated purpose of data processing, and whereby significantly larger number of persons could access the personal and special data of the data subjects.
- (374) **e)** With regard to data transfer, the notice indicates that the consent of the data subject provides basis for the transfer of data to any Scientology church, mission in any country, including the Mother Church in the United States, for the analysis of the data on performance, activity or behaviour. However, according to the Authority, a consent to data processing does not also mean consent to the transfer of data. In the case of data transfer, a separate statement of consent is required, and therefore detailed and accurate information must also be provided about which organization(s)—with contact information duly indicated—may receive the data and for what purpose. It is only in the knowledge of these that the data subject can decide on giving his voluntary consent to the transfer of his data to other bodies.
- (375) Furthermore, according to their statement, the printed-out questionnaires are transferred to the superiors who had requested the completion of the questionnaire. In this case, the legal basis for the data transfer is the explicit consent of the data subject. However, this reply lacking concrete detail, the Authority cannot make any finding on the merits of this issue, but maintains its general opinion on the transfer of data outlined above.
- (376) **f)** The notice likewise does not mention the rights and remedies available to the data subject. The only information the 'Life History Form' provides is that the data subject has been informed of his rights under the applicable data protection law, and has access to the personal data processed. This provision of information likewise fails to meet the requirements of the Privacy Act. In providing the information about the rights of the data subject, the data controller must specify the contact details where he or she may submit a request and the period available for the data controller to comply with the request in question. In addition, it is expedient to delineate the content of individual rights, as well, because private persons may not recognize the individual rights by their designations.
- (377) >From among possibilities of enforcing rights, the data controller must provide information on the possibility of initiating two procedures. First, the data controller must inform the data subject that he may initiate proceedings by the Authority. The data controller's notice must also indicate the official electronic address, postal address,

telephone number, as well as the website address of the Authority. Second, the data subject must be informed of the possibility of bringing the case to court. In this case, the data controller must mention the particularity that the data subject may decide to initiate the proceedings before the court of domicile or residence.

(378) Consequently, the Data Controllers failed to provide information on the purpose of data processing, the identity of the data controller, the duration of data processing, which Church persons, officers or staff members are entitled to access the personal data of the applicants, as well as on data transfer, and the possibilities enforcing rights and pursuing remedies by the data subjects.

(379) With regard to the notice, it must also be noted that, due to the fact that it is in English, it does not meet the requirement of being readily intelligible. The Article 29 Data Protection Working Party opinion 15/2011 on the definition of consent also stated that ‘the way the information is given (in plain text, without use of jargon, understandable, conspicuous) is crucial in assessing whether the consent is “informed”. The way in which this information should be given depends on the context: a regular/average user should be able to understand it.’ The Working Party also emphasized the importance of the accessibility and visibility of information provided: ‘information must be given directly to individuals. It is not enough for information to be “available” somewhere. [...] The information must be clearly visible (type and size of fonts), prominent and comprehensive.’ In the case of Hungarian-speaker data subjects, the requirement of appropriate and readily intelligible information is met when information on data processing is provided in Hungarian. The Authority would only accept that the questionnaire is in English if it were demonstrated that all applicants for the positions had a knowledge of English whereby they could understand the full text of the ‘Life History Form’. However, that is obviously not the case because otherwise no unofficial translation of the questions would have been made.

(380) Consequently, the notice does not comply with requirements under Section (2) of the Privacy Act, the Data Controllers have therefore breached their obligation to provide prior information, and, thereby, as the provision of prior information is a condition of consent, they infringed the requirement concerning consent as laid down by Section 3 (7) of the Privacy Act. Moreover, third parties have in no way given their consent when the Church processes their personal without their knowledge. Thus, the conditions of providing information and obtaining consent are met neither in this regard.

(381) **5.2.3.2** Regarding the explicit and specific nature of the statement of consent, the Authority also holds the opinion delivered by the Article 29 Working Party in its opinion no. 15/2011, which states ““Specific consent” is therefore intrinsically linked to the fact that consent must be informed.’

(382) Given that the information was not provided appropriately, under the rules laid down by the Privacy Act, the explicit nature of giving consent cannot be established either. As a consequence, the consent given cannot be considered explicit; the Church has therefore infringed Section 3 (7) of the Privacy Act in this regard, as well.

(383) In the opinion of the Authority, the legal basis for processing the data collected by way of the ‘Life History Form’ is not ensured, as the consent given under Section 5 (2) a) of the Privacy Act is inappropriate due to the defects discussed above, while Section 5 (2) c) of the Privacy Act is not applicable, because there is no law that would require the processing of these data on the basis of public interest.

(384) As a consequence of the aforementioned, the Church was found to process the personal and special data of applicants for positions and thus to breach Section 5 (1) and (2) of the Privacy Act.

(385) 5.2.4 The Processing of the Data of Third Parties

(386) According to Section 3 (22) of the Privacy Act³⁸, any natural or legal person, or organisation without legal personality other than the data subject, the data controller or the data processor is to be deemed a third party.

(387) On the basis of this concept, any data in the 'Life History Form' which applies to a person other than the applicant is to be deemed a third party and personal data relating to a third party. This includes, for example, data on the applicant's relatives, friends, acquaintances, and love partners. The questionnaire also includes special data of third parties, and, like the applicants themselves, often in extraordinary detail. For example:

- 1) Do you have any debt with another person?
 - a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) How much do you owe:
 - d) What currency is this amount in:
 - e) When did you incur this debt:
 - f) Details
- 2) Have you ever committed another to a rest home, psychological, psychiatric or mental institution of any kind?
 - a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) When was this:
 - d) Any handlings done on this:
- 3) Have you ever sent someone psychologist or psychiatrist?
 - a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) How many times:
 - d) What occurred:
 - e) Any handlings done on this:
- 4) Have you any direct family members who have worked for or have been involved with anything to do with an intelligence agency?
 - a) Name of the person, personal and surname:
 - b) What is your relationship with the person:
 - c) Name of the organization:
 - d) The period of being involved: from ... to...
 - e) Activity with the group:
 - f) Is this person still connected with the group:
 - g) Any handlings done on this:
- 5) Are you related to or connected to intelligence agencies either by past history or immediate familial connections? Have you been involved with anything related to it?
 - a) Name of the person, personal and surname:

³⁸ Section 3 (22) of the Privacy Act states: "third party" any natural or legal person, or organisation without legal personality other than the data subject, the data controller or the data processor'.

- b) What is your relationship with the person:
 - c) Name of the intelligence organization:
 - d) The period of being involved: from... to...
 - e) Activity with the group:
 - f) Are you still connected with the person:
 - g) Any handlings done on this:
- 6) Have you ever been connected to person who was employed by or was involved with a communist organization?
- a) If yes, the name of the person, first and surname:
 - b) The name of the organization:
 - c) Period of being involved: from: ... to...
 - d) The activity with the group:
 - e) Is he or she still connected with the group:
 - f) Any handlings done on this:
- 7) Have you ever been connected to person who worked for, was associated with or involved with the following groups or organizations?
- a) organized medicine
 - b) banking industry
 - c) psychiatry, psychiatrists and psychologists
 - d) media
 - e) government
 - f) public relations firms
 - g) military organizations
- If yes, the name of the person, first and last:
- Persons relation to you:
 - Name of organization:
 - Type of organization:
 - His activity or involvement:
 - Period of being involved: from... to...
 - Are you still connected with this person in the present time:
 - Any handlings done on this:
- 8) Have you ever been or are you connected to anyone who has threatened or attacked Scientology? If yes, give complete details:
- a) If yes, who was involved: first and second name:
 - b) Your relationship with him or her:
 - c) When was this:
 - d) Are you still involved with or connected to this person?
 - e) What occurred:
 - f) What were you involved in with this person:
 - g) Any handlings done on this:
- 9) In present time, are you connected in any way to any person who is engaged in selling illegal drugs, or deals in activity connected to illegal drug sales or distribution?
- a) If yes, the name of person, first and second name:
 - b) The relationship of the person with you:
 - c) What period was this: from... to...
 - d) What kind of activity was this person involved in:
 - e) Any handlings done on this:

- 10) Have you ever engaged in adultery?
 - a) If yes, when: from... to...
 - b) Who was involved: first and last name:
 - c) What occurred:
 - d) Any handlings done on this:
- 11) Have you ever engaged in homosexual activity?
 - a) If yes, when: from... to...
 - b) Who was involved: first and last name:
 - c) What occurred and how often:
 - d) Any handlings done on this:
- 12) Have you ever engaged in perverted sexual activities?
 - a) If yes, when: from... to...
 - b) Who was involved: first and last name:
 - c) What occurred and how often:
 - d) Any handlings done on this:
- 13) Give a general 2D history for yourself, including your earliest sexual experience of any kind, when you started dating, and the names of all persons involved, their occupation and these person's relationship to you. Make a chronological list of all persons you have had sexual relationships and what you engaged in. Approximate the number of times you carried on any kind of activity, and note any perversions you engaged in. Who? What? How often? Be as complete as you can.
 - a) Over what time period: from... to...
 - b) Who was involved: first and last name.
 - c) The person's occupation:
 - d) The person's relationship with you: friend, child, parent, sibling, employer, employee, patient, physician, spouse, family relation, business partner, auditor, pc, colleague, superior, subordinate, step or foster parent, lender, 2D
 - e) The person's age:
 - f) What occurred and how often:
- 14) Have you ever been connected to a squirrel or anyone connected to squirrel group?
 - a) If yes, first and last name:
 - b) When was this: from... to...
 - c) Are you currently involved with or connected to this person:
 - d) What was this person involved with:
 - e) Any handlings done on this:
- 15) Are you married, single, divorced or separated?
 - a) If you are married or have been married:
 - b) Name of spouse: first and last name:
 - c) Maiden name of wife:
 - d) When were your married?
 - e) Is he/she a Scientologist?
 - f) Are you married to this person in present time:
 - g) Is this person on staff:
 - h) What is your relationship with this person (spouse or ex-spouse):
 - i) If separated or divorced, any difficulties with your spouse/ex-spouse:
- 16) Do you have any children?

- a) If yes, their names: first and last names:
 - b) When were they born?
 - c) Are they Scientologists?
 - d) Describe your relationship with them:
 - e) If you are divorced or separated, do you pay child support?
 - f) If you are divorced or separated, do you have any official obligation to or connection with your children:
 - g) Have any of your children expressed any views opposing Dianetics or Scientology, or have any had any objection to your working with the Church:
 - h) If the children aren't with you, how do you feel about being separated from them:
- 17) Supply the following information about your mother:
- a) Her name: first and last:
 - b) Her maiden name:
 - c) Current address:
 - d) Current occupation:
 - e) Any past occupations:
 - f) Is she a Scientologist?
 - g) What is your attitude towards your mother:
 - h) How does she regard you:
- 18) Supply the following information about your father:
- a) His name: first and last:
 - b) Current address:
 - c) Current occupation:
 - d) Any past occupations:
 - e) Is he a Scientologist?
 - f) What is your attitude towards your father:
 - g) How does he regard you:
- 19) Do you have step or foster parents?
- a) Their names: first and last:
 - b) Current occupation:
 - c) Any past occupations:
 - d) Is he or she a Scientologist?
 - e) What is your attitude towards your step or foster parents:
- 20) Do you have brothers or sisters?
- a) If yes, give their first and last names:
 - b) Current Occupation:
 - e) Any previous occupations:
 - f) Are they Scientologists?
- 21) Do you have any other relatives (grandparents, aunts, uncles, cousins, nephews, nieces)?
- a) If yes, first and last name
 - b) Current Occupation:
 - c) Current address:
 - d) Are they Scientologists?

- 22) List your friends (even before Scientology) and what kind of relationship you had with them, what kind of work they have been doing and what they are doing at present. Write down what you've been communicating about since you are in Scientology.
- Name(s): first and last
 - What was your relationship with them:
 - What work are they doing now:
 - What is your communication with them since you are a Scientologist?
- 23) Do you have or have had a direct or indirect relationship or family ties to persons who are ex-Sea Org members?
- If yes: first and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 24) Do you have or have you had a direct or indirect relationship or family relationship with persons who are freeloaders with the Church?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 25) Do you have or have had any direct or indirect relationship or family ties with a person who is an ex-Guardian's Office employee?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 26) Do you have any friends or relatives who have made disaffected statements or have sour views regarding Church activities or Management?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Give details of your relationship:
 - Current status of the person:
- 27) Have your parents or family members ever been antagonistic to Scientology?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee,

patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) What happened:

e) Any handlings done on this:

f) Is this person antagonistic in present time:

28) Have any of your relatives expressed any opinion against Dianetics or Scientology, or do t a) If yes: name and last name

b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) What happened:

e) Any handlings done on this:

f) Has this person expressed this opinion or objection in present time:

29) Are you intimately connected with persons (such as marital or familial ties) of known antagonism to mental or spiritual treatment or Scientology?

a) If yes: name and last name

b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) What happened:

e) Any handlings done on this:

f) Is this person currently antagonistic to mental or spiritual treatment or to Scientology in present time:

30) Have any of your family members or close friends expressed scepticism or been critical of Scientology?

a) If yes: name and last name

b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) What happened:

e) Any handlings done on this:

f) Has this person currently expressed scepticism or been critical of Scientology:

31) Are you or have you ever been connected to a person who is not in good standing with the Church of Scientology?

a) If yes: name and last name

b) Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D

c) Over which period: from... to...

d) Are you currently involved with or connected to this person:

e) What kind of activity did you get involved with this person:

f) Any handlings done on this:

- 32) Do you have any relationship with criminal individuals, either in present time, or in the past?
- If yes: name and last name
 - Relationship of the person to you: friend, child, parent, brother, employer, employee, patient, physician, spouse, family relationship, business relationship, auditor, pc, colleague, superior, subordinate, step/foster parent, lender, 2D
 - Over which period: from... to...
 - Are you currently involved with or connected to this person:
 - What kind of criminal activity this person get involved with:
 - What kind of criminal activity did you get involved with this person:
 - Any handlings done on this:
- 33) Do you have any friends or family members who have relationships with criminal individuals, either in present time, or in the past?
- If yes: name and last name of friend/family member
 - Relationship of the person to you: aunt, brother, nephew, daughter, father, father-in-law, grandparent, husband mother, mother-in-law, niece, other, sister, son, uncle, wife
 - First and last name of criminal individual:
 - Over which period: from... to...
 - Are you currently involved with or connected to this person:
 - What kind of criminal activity this person get involved with the criminal individual:
 - Any handlings done on this:
- 34) Do your friends or family members have any contact with criminal organizations, either in the present time or in the past?
- If yes: first and last name of the friend/family member
 - The relationship of the person with you: aunt, brother, cousin, daughter, father, father-in-law, grandparent, husband, mother, mother-in-law, nephew, niece, other, sister, son, uncle, wife
 - Name of the criminal organization:
 - Over which period: from... to...
 - Is this person currently involved with or connected to this organization:
 - What kind of activity did this person get involved with this criminal organization:
 - Any handlings done on this:
- 35) Do you live with someone?
- If yes, who do you live with: first and last name.
- 36) Are you financially supported by anyone other than yourself, your org or a Sea Org org?
- If yes, who supports you and what is the arrangement:
- 37) Give a detailed description of your current life, who you live with, who you spend your leisure time with, who you date, etc. What is your daily schedule? What you do in your rest time?
- (388) In a point of this Decision above, the Authority has already expounded that Church breached the principle of purpose limitation under Section 4 (1) of the Privacy Act by processing the personal data of third parties. In the opinion of the Authority, it is not a lawful purpose of data processing to process the personal data of third parties without their consent when examining the aptitude of an applicant for a position; the data controller failed to prove the necessity of this for concluding a legal relationship with the candidate for the given position.

- (389) In the case where data processing has no lawful purpose, the data processing as a whole is deemed to be unlawful, so its further examination, including the examination of its legal basis, is deprived of its object. Notwithstanding, it cannot be ignored that the Church not only fails to inform these third parties of the circumstances of the data processing, but also processes the personal and special data of these persons without their knowledge that the Church collects and stores their data at all. By this data processing without the provision of information, the Church acquires a 'dominant informational position', which is extremely damaging to the rights of these third parties to the protection of personal data and privacy, they cannot enforce their right to informational self-determination. Due to the absence of prior information, the requirement of being explicit is also not met. Concerning consent, it should also be noted that a data subject's consent cannot bear the interpretation that it applies to another person, that it is made instead of another person, as, in the case in question, the applicant's consent cannot be construed as the consent of a third party.
- (390) Consequently, the Church, by processing the personal and special data of persons other than the employee, violated the principles of purpose limitation and necessity of data processing within the meaning of Section 4 (1)–(2) of the Privacy Act. In order to determine aptitude for positions in the CSH Central Organization, the processing of the personal data of these third parties cannot be considered a lawful purpose, and cannot be necessary for concluding a legal relationship with the applicant to the position.
- (391) In addition, it is also without appropriate legal basis that the Data Controllers process the personal and special data of third parties because none of the conceptual elements of the legal basis they indicate, consent, is met: third parties receive no prior information; it is not freely, themselves personally, that they give consent to the processing of their personal data, and consequently a further conceptual element, consent being explicit, cannot be effected. Since no other legal basis can be established—such as a law requiring the processing of these data on the basis of public interest—the Church violated Sections 3 (7) and 5 (1)–(2) of the Privacy Act.
- (392) In addition to the above, it is necessary to examine the extent to which this data processing lacking a lawful purpose and a legal basis can be considered fair. Section 4 (1) of the Privacy Act states: 'The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness'. Fairness of data processing is closely connected with the protection of human dignity; unfair data processing may severely infringe not only the rights to personal data but also in the human dignity of the data subjects.
- (393) In several decisions,³⁹ the Constitutional Court considered the right to human dignity as a formulation of so-called general personality rights; it appears in various aspects, such as the right to free personal development, the right to self-determination, general freedom of action, or the right to privacy. The right to human dignity means that the individual's autonomy and self-determination has a core extracted from the disposal of everyone else, whereby, in the classical formulation, man remains a subject, and cannot become a means or an object.
- (394) One aspect of the right to human dignity is therefore the right to privacy, closely related to the right to the protection of personal data, which is a category more limited in scope. In AB Decision 15/1991 (13 April), the Constitutional Court interpreted the right to the protection of personal data as the right to informational self-determination.

³⁹ For instance: AB Decision 8/1990 (23 April) and AB Decision 64/1991 (17 December).

The essence of this is that everyone personally determines the disclosure and use of his or her own personal data. To collect and use personal data is usually only allowed with the consent of the data subject; everyone should be able to track and control the entire path of data processing, that is, everyone has the right to know who uses his or her personal data, and when, where, and why so. Exceptionally, law may require the mandatory disclosure of personal data and prescribe the way it is used. Such law restricts the fundamental right to informational self-determination, and is constitutional if it fulfils the conditions required by the Fundamental Law.

(395) The CSH Central Organization repeatedly stated that data processing is done in relation to acquiring staff membership, on the basis of the consent of the data subject and not under mandatory provision of law. In the foregoing, the Authority explained why consent as the legal basis in the case of data processing by the Church does not comply with rules set forth by the Privacy Act. In addition, the Church processing the personal data of third parties without providing them any prior information or being given their consent, these third parties do not at all determine the disclosure and use of their personal data. Consequently, their right to informational self-determination, their privacy, and, as stated above, their rights to human dignity are violated, which means that this data processing qualifies as unfair. As a result of the aforementioned, the Church violated the requirement of fairness under Section 4 (1) of the Privacy Act.

(396) 5.3 Other declarations in the Staff Member Folders

(397) 5.3.1 'Qualification Checklist for Religious Persons'

(398) The 'Qualification Checklist for Religious Persons' questionnaire is required to be filled in by the applicant for staff membership. The purpose of the questionnaire and access to the data in them is to establish the aptitude of the applicant for the given position.

(399) The checklist includes the applicant's name, telephone number, address, as well as questions relating to data on health, pathological addiction, criminal personal data, other personal data, the personal data of family members and relatives, and the personal data of third parties.

(400) The following questions are the relevant ones:

- 'Are you a notorious criminal, are you wanted?'
- 'Do you have a psychotic past?'
- 'Have you ever undergone any electric, insulin or other shock treatment or psychiatric brain operation?'
- Are you an active drug pusher?
- Are you related to or connected to intelligence agencies either by past history or immediate familial connections?
- 'Are any of your parents or foster parents vicious enemies of Scientology?'
- 'Do you have personal debts that could remove you from the organization at any time?'

(401) The checklist includes the following data protection declaration: *'I consent to the processing of my personal data—including special personal data—submitted and collected in order to assess my qualification and aptitude. I acknowledge that my data will be stored until my declaration is withdrawn. Religious persons involved in human resources matters have the right to access them under internal guidelines. I have been informed that I can request information on, the correction and deletion of the date*

recorded on me. I acknowledge that the content of the folder that applies to my qualification is treated confidentially by the Organization.

I acknowledge that the disclosure of data is voluntary. Mark X where appropriate: I consent I do not consent.'

- (402) With regard to the questions asked, the opinion of the Authority is the same as in the case of the 'Life History Form'. These data are not necessary for determining aptitude for a position, while there is no lawful basis for processing data on third parties.
- (403) With regard to the duration of the data processing, the declaration provides that the Church stores the data until the declaration is withdrawn. However, this statement does not provide adequate information to the data subject, and storage until its withdrawal does not meet data protection requirements. In this case, the purpose of data processing is to determine the aptitude of the applicant for the position. If the legal relationship with the staff member terminates, it is obviously unnecessary to process data on such aptitude, and the data must be deleted within five years of the termination of the legal relationship—regardless of whether the data subject has withdrawn his or her consent or requested the deletion of the data—on account of the fact that the rules of service contracts are laid down by the Civil Code, according to which the general lapse period is five years.
- (404) What appears from this declaration is merely that religious persons involved in human resources matters have the right, under internal guidelines, to access the data given. This formulation is too broad, not sufficiently precise, it is thus necessary to specify exactly the occupants of which posts or positions are entitled to access the data. It is also necessary to determine how these persons can access the data. This is fundamentally important because the Church can be considered a larger organization system where—as confirmed by the CSH reply letter and also by, for example, the document called 'Pledge of Religious Commitment and Confidentiality'—a number of different persons can process the personal data. This obligation to provide information is also justified by the fact that the unauthorized access to a large number of personal or special data of staff members has a significant impact on their right of informational self-determination and on their privacy.
- (405) In this context, the kind of data processing operations by those having access to them must also be mentioned.
- (406) The declaration does not provide information on what rights the data subjects are entitled to in terms of data processing. In this regard, the data controller must inform the data subject on the address where to submit his or her request, and what period of time the data controller has to fulfil the request of the data subject. Apart from these, the data controller must also mention the specialties of exercising the rights of the data subjects.
- (407) >From among the possibilities of enforcing rights, the data controller must provide information on the possibility of initiating two proceedings. On the one hand, it must call the attention of the data subject to the fact that he or she can initiate proceedings by the Authority. The data controller must indicate in the notice the official electronic and postal address, the telephone number and the address of website of the Authority. On the other hand, it must inform the data subject of the possibility of bringing the case to court. In this case, it must mention the particularity that the data subject may decide to initiate the proceedings before the court of domicile or residence.

- (408) On the basis of the foregoing, the Authority has found that the Church breached Sections 4 (1)–(2), 3 (7) and 20 (2) of the Privacy Act.
- (409) In the opinion of the Authority, the legal basis for processing the data collected by way of the form is not ensured, because the legal basis within the meaning of Section 5 (2) of the Privacy Act is inappropriate due to the defects of the consent presented in above, while Section 5 (2) c) does not apply as there is no law that would require the processing of these data on the basis of public interest.
- (410) On the basis of the foregoing, it was found that the Church processes the personal and special data of the applicants to the position without appropriate legal basis, and thereby breaches Sections 5 (1) and (2) of the Privacy Act.
- (411) 5.3.2 ‘Application Form for Religious Persons’**
- (412) In order to become a staff member, the questionnaire called ‘Application Form for Religious Persons’ must also be filled in. The form requires the provisions of the following personal data: in annex
- name,
 - maiden name,
 - mother’s name
 - place of birth,
 - date of birth,
 - tax identification number,
 - Identity card number,
 - social security number,
 - permanent address,
 - temporary (postal) address,
 - phone number (s)
 - citizenship,
 - in the case of foreign nationals, residence permit number, date of expiry,
 - previous workplaces,
 - areas of work experience,
 - are you currently employed; how are you registered there; or are you employed for more or less than 36 hours a week; commencement and termination of the contract of employment; the position filled.
- (413) The form includes the following data protection declaration: *‘I consent to the processing of my personal data—including special personal data—submitted and collected for registering at offices. I acknowledge that my data will be stored until my declaration is withdrawn. Religious persons involved in human resources matters have the right to access them under internal guidelines. I have been informed that I can request information on and the correction and deletion of the data recorded on me.’*
- (414) The declaration also provides for data transfer when stating that the data need to be registered at offices. This formulation does not suffice for a case of data transfer; specific information must be given on the legal basis and the addressee of the data transfer, as well as the data transferred.
- (415) Nevertheless, the Authority holds that the findings with respect to ‘Qualification Checklist for Religious Persons’ questionnaire apply to this document, as well; and it has therefore found that the Church breached Sections 4 (1)–(2), 3 (7) and 20 (2) of the Privacy Act in the case of this document, too.

(416) On the basis of the foregoing, it was found that the Church processes the personal and special data of the applicants to given positions without appropriate legal basis, and thereby breaches Sections 5 (1) a) of the Privacy Act.

(417) With regard to the range of data processed, the opinion of the Authority is that the processing of the identity cards numbers is not indispensably necessary for registering at offices. This is corroborated for instance by the fact that the base registrations of neither Act CXCV of 2011 on Civil Service Officials nor Act XXXIII of 1992 on the Legal status of Public Officials require the processing of this data. On this basis, the Authority has found that the principle of necessity under Section 4 (2) of the Privacy Act is breached in this respect. The Authority has no objection to the processing of further data in the form.

(418) 5.3.3 'A–J Sources of Trouble Meter Check'

(419) In the procedure for admitting staff, the applicant is to undergo an A–J check with the use of the E-meter. The purpose of the check is to find out whether the applicant is a source of trouble⁴⁰ or no.

(420) The form requires the name of the applicant to be filled in, as well as answers to the following questions relevant and sensitive from the point of view of data protection:

A-1 Are you in close contact with anyone antagonistic to mental or spiritual treatment or to Scientology at present?

A-2 Have your family members or friends ever expressed any disagreement with Scientology or with your being a Scientologist?

A-3 Is there anyone who appreciates you or downgrades your profits?

A-5 Is there anyone you do not tell about your being a Scientologist?

A-7 Is there anyone who does not want you to be here?

B-1 Do you have a criminal record?

B-2 Have you committed a crime which you were not caught for?

B-3 Are you currently doing something unethical or illegal?

B-4 Are you wanted by the police?

B-5 Are you involved in any activity that could cause you to be blackmailed?

B-6 Do you get or pay money illegally without reporting to the competent authority?

B-7 Do you have any tax arrears?

B-8 Do you comply with the Hungarian tax laws?

B-9 Do you avoid paying tax in a way which can be considered illegal?

B-10 Do you engage in any unethical or illegal online activities?

B-11 Do you watch porn?

C-2 Have any of your friends or relatives threatened to sue, to put to disadvantage or attack Scientology?

D-2 Has your condition been impaired or have you been harmed because of being in Scientology?

D-3 Is there anyone who is the cause of how you are now or of your current condition?

E-2 Do you feel obliged to anyone for being here?

E-3 Did anyone send you here?

1. Have you ever threatened to commit suicide, or have you ever committed suicide?

1.A. Have you ever seriously considered suicide?

2. Do you have any secrecy vows? (If yes, provide the details)

⁴⁰ According to the information available to the Authority, a possible source of trouble is one who has a relationship with someone or some group suppressive towards Scientology.

3. Are you or is anyone in your family a member of the media, government, police or intelligence service?
 4. Do you have any psychiatric or psychological treatment history? (If yes, provide the data)
 5. Have you taken any psychiatric drugs? (If yes, what, when, for how long)
 6. Have you ever had any shock treatment or so-called psychiatric brain surgery? (If so, provide all the data)
 7. Are you terminally ill?
 - 7A. Do you have any past related to cancer? (If so, provide all the data)
 - 7B. Do you have any physical condition, situation or illnesses, and do you receive any medical treatment? (If so, underline, and provide the details)
 9. Have you ever had a psychological breakdown (loss of consciousness)? (Clarify this thoroughly, and provide all the data)
 11. Do you have any difficulties with sleep? (If yes, provide the details)
 12. Do you have any legal obligations that you do not fulfil, such as paying child support, etc.? (If so, provide all the data)
- (421) The form includes no information on the processing of personal data, and thus violates requirement of providing prior information laid down by Section 20 (1) and (2) of the Privacy Act, and so consent as legal basis is not applicable.
- (422) Moreover, as expounded earlier, the processing of the data of third parties violates the principle of purpose limitation, and the processing of criminal, health, pathological addiction, and other personal data violates the principle of necessity.
- (423) On the basis of the foregoing, the Authority has found that the Church breached Sections 4 (1)–(2), 3 (7) and 20 (1) and (2) of the Privacy Act in the case of this document, too.
- (424) In the case of the special data collected in this form, as well, the legal basis of processing is not ensured because of the defects demonstrated above in the consent provided for in Section 5 (2) a) of the Privacy Act, while Section 5 (2) c) of the Privacy Act is not applicable as there is no law that would require the processing of these data on the basis of public interest.
- (425) As a result of the aforementioned, the Church processes the personal and special data of the applicants without appropriate legal basis, and thereby breaches Section 5 (1) and (2) of the Privacy Act.
- (426) **5.3.4 'HCO WW Security Form 7A'**
- (427) In the procedure for admitting staff, again with the use of the E-meter, the so-called 'HCO WW Security Form 7A' has to be completed. According to the notice in the document, the applicant who passes this check will be trusted by the Church. The one who does not pass the check, cannot be employed in the Church until the handlings prescribed by the Church bring the required result.
- (428) The form requires answers to the following questions relevant and sensitive from the point of view of data protection:
- Are you a pervert?
 - Have you ever stolen from an employer?
 - Have you ever falsified records to obtain money by fraud?
 - Have you ever tried to get a fellow worker in trouble by telling lies about him or her?
 - Are you or have you ever been a Communist?

- Have you ever worked in an organization just to spy on it for others?
 - Have you ever taken money for passing on confidential information?
 - Have you ever taken a bribe or a secret commission to give someone an employer's business?
 - Do you have a criminal record?
 - Are you wanted anywhere by the police?
- (429) The form includes no information on the processing of personal data, and thus violates requirement of providing prior information laid down by Section 20 (1) and (2) of the Privacy Act, and so consent as legal basis is not applicable.
- (430) Moreover, as expounded earlier, the processing criminal, health, pathological addiction, and other personal data violates the principle of necessity.
- (431) On the basis of the foregoing, the Authority has found that the Church breached Sections 4 (1)–(2), 3 (7) and 20 (1) and (2) of the Privacy Act in the case of this document, too.
- (432) In the case of the special data collected in this form, the legal basis of processing is likewise not ensured in the opinion of the Authority, because of the defects demonstrated above in the consent provided for in Section 5 (2) a) of the Privacy Act, while Section 5 (2) c) of the Privacy Act is not applicable as there is no law that would require the processing of these data on the basis of public interest.
- (433) As a result of the aforementioned, the Church processes the personal and special data of the applicants without appropriate legal basis, and thereby breaches Section 5 (1) and (2) of the Privacy Act.
- (434) 5.3.5 ‘Pledge of Religious Commitment and Application for Religious Service to the Religious Association of Scientology Central Organization’**
- (435) By completing this document, the data subject applies for service as a religious person at the Central Organization of the Church.
- (436) The pledge requires the provision of the following data: name, signature, address, name and signature of witness, in the case of a minor applicant, the name and signature of a parent or guardian.
- (437) Point 8 of the document is on data protection: *‘I declare I have received information on the right of informational self-determination and the publicity of data of public interest, I made my declaration concerning my rights in a separate document.’*
- (438) The Authority was unable to establish which this separate document qualified as such. At the same time, it can be stated that this provision of information does not meet the requirements laid down by Section 20 (2) of the Privacy Act.
- (439) The annex of the pledge includes the document called ‘Declaration on Undertaking Religious Service’ in which the applicant states that he or she undertakes a defined service for the Church in a defined time. The declaration requires the provision of the following data: name, mother’s name, tax identification number, permanent address.
- (440) The declaration provides no separate information on data processing.
- (441) On the basis of the aforementioned, the Authority has found that, in respect of both these documents, the Church breached Sections 4 (1)–(2), 3 (7) and 20 (2) of the Privacy Act in the case of this document, too.
- (442) As a result of the foregoing, it can be stated that the Church processes the personal and special data of the applicants without appropriate legal basis, and thereby breaches Section 5 (1) a) of the Privacy Act.

(443) 5.3.6 'Medical Questionnaire'⁴¹

- (444) The document requires answers to questions on the health condition of the applicant. In the first question, there is a list of 26 diseases each of which has to be ticked yes or no whether the data subject contracted the disease or no; underneath the list, detailed descriptions are required.
- (445) There is a further question on when the applicant last consulted a physician, why he went to be examined, and what the result was.
- (446) There is also a question on what medicaments, vitamins the applicant takes, and for what reason.
- (447) The questionnaire also asks about sleeping habits, how many hours and how the data subject sleeps.
- (448) Moreover, the data subject has to respond to questions on what health problems he or she has had in the past or has now, whether she or he has any problem that might lead further problems in the near future, whether he or she is undergoing psychological or psychiatric treatment, and he or she has to provide information on his or her treatment history.
- (449) In the opinion of the authority with regard to this document, when the purpose is to establish the medical aptitude of the data subject for the position, the coherent data protection practice is that it is only the examined employee and the examining professional, i.e. the physician, that are entitled to access to the health data and examination results. It is important to underline this because consequences unknown to the data subject, the employee, can be drawn from health examination results. The employer, the CSH Central Organization in this case, is entitled only to the information whether the applicant is fit for the given position or not, and what conditions are to be provided for this. The CSH Central Organization has right to access neither the details of the examination nor its full documentation.⁴²
- (450) As a consequence of the foregoing, the Authority holds that the questionnaire, by requiring data concerning the health condition of numerous staff members, processes data without lawful purpose, and thereby violates Section 4 (1) of the Privacy Act.
- (451) The questionnaire provides no information on data processing, thereby violating the obligation to provide prior information under Section 20 (1) and (2) of the Privacy Act, and thus consent as legal basis is not applicable.
- (452) On the basis of the foregoing, the Authority has found that the Church violated Sections 4 (1), 3 (7), and 20 (1) and (2) of the Privacy Act in respect of this document.
- (453) In the case of the special data collected in this questionnaire likewise, the legal basis of processing is not ensured in the opinion of the Authority, because of the defects demonstrated above in the consent provided for in Section 5 (2) a) of the Privacy Act,

⁴¹ In Hungarian: 'Egészségügyi kérdőív'

⁴² Section 13 of Decree 33/1998 of the Minister of Social Welfare Concerning the Medical Examination for Specified Categories of Work provides: '(1) The opinion on medical or hygienic aptitude of persons for occupations and professions shall establish whether the examined person is apt, temporarily apt or unapt [...] for the given occupation, activity [...] or profession.

(4) The organ examining occupational or professional aptitude shall disclose the opinion to the employee [...].

(5) The examiner of medical or hygienic aptitude for occupations and professions shall disclose the reasons of aptitude to the employee [...], and shall only disclose it to the employer with the consent in writing of the employee.'

while Section 5 (2) c) of the Privacy Act is not applicable as there is no law that would require the processing of these data on the basis of public interest.

(454) As a consequence of the aforementioned, the Church has been found to process the personal and special data of the applicants without appropriate legal basis, thereby violating Section 5 (1) and (2) of the Privacy Act.

(455) 6 The Lawfulness of Data Processing in the PC Folders

(456) 6.1 The Function, Structure and Content of the PC Folders

(457) A PC Folder is the folder of a 'preclear' containing the auditor's reports of previous sessions, instructions by the case supervisor, and other reports and forms that show what happened to the PC in the course of his auditing and other treatments. The name and case level of the preclear is written on the front and spine of his or her folder. An auditor or a case supervisor can take and look at it, see what happened to the PC, what services he or she has participated in.

(458) A PC may have several folders. The latest folder always contains summaries summing up the material of earlier folders (e.g. Folder Summary, Folder Mistakes Summary) and other documents prescribed by internal rules. Folders are numbered, and old ones have dates of documents written on them. Folder Summaries must contain the starting date of the new folder.

(459) Detailed rules apply to the structure and form of PC Folders. Old folders and the folders of PCs not being audited are to be carefully locked away in alphabetical order in registries. A register is kept on the PC Folders that contains how many folders a PC has, where they are stored if not in use.

(460) Detailed rules are established on the contents of PC Folders, as well, on how documents are to be arranged in the folders, what clips are to be used, what documents are to be attached in what order to the insides of the front and back covers.

(461) 6.2 The Major Documents in the Folders and the Personal Data Recorded in them

(462) 6.2.1 Declarations, Agreements and other Documents Concerning Auditing

(463) According to the statement of the Data Controllers referred to in Section I.4 of this Decision, the core of the religious services of the Church of Scientology is training and auditing. Auditing is an application of the procedures of Dianetics and Scientology to a person by a trained auditor.

(464) Auditing is done by an auditor, a minister of the Church of Scientology. According to the Church of Scientology, it is an extremely unique form of personal counselling. Put very simply, during an auditing session, the auditor asks a series of predefined questions from someone, the believer, and gets answers to them. It is a precise activity, with all details set, wherein the auditor uses different procedures consisting of series of questions and instructions laid down in the so-called Auditor's Code. Aside from this, auditing is supported by a 'religious artefact', the E-meter. This is to 'locate areas of spiritual distress or travail'. The Auditor's Code requires that a minister [auditor] never 'use the secrets of a preclear divulged in session'. The auditor takes down notes during the session, which are then put in the Preclear Folder.

(465) In the course of auditing, the believer is required to sign various forms, and the assembly of their personal folders is based on these declarations. According to the letter dated 20 January 2017 by the CSH Central Organization, a PC Folder is made for the data subject when he or she undergoes any introductory auditing. Prior to the data subject is required to sign the '*Basic Scientology Services Enrolment Application Form, Agreement and General Release Declaration*' and the '*Confidential Religious Folder Agreement*'.

When one 'starts to participate in main services', that is, reaches a higher level of auditing as marked out on the 'Bridge', he or she is requested to sign the '*Religious Services Application Form, Agreement and General Release Declaration*' and the '*Confidential Religious Folder Agreements*'.

(466) 6.2.1.1 'Basic Scientology Services Application Form, Agreement and General Release Declaration'

(467) The form requires the provision of the following personal data: the name, address, signature of the data subject, the name and signature of the witness; in the case of a minor, the name and signature of the parent or guardian.

(468) By signing the declaration, the believer acknowledges that he is aware that the services provided by the CSH Central Organization are of a spiritual nature and are not intended to diagnose and treat bodily harm. He or she consents to the processing of his or her personal data by way of the following statement: 'In connection with my participation in the Scientology religious services, the Central Organization may assemble folders, including auditing folders ('Preclear Folders') and documents that contain notes and memos about my spiritual progress. These documents are confidential, are the exclusive property of the Church of Scientology International, and I consent to the processing of my personal data, including delicate personal data, that have been collected about me in relation to my participation in religious services in order to follow my spiritual development.'

(469) According to the declaration, the personal data processed are kept as secrets of the confessional, stored until the declaration is withdrawn, and can only be accessed by persons 'concerned under external and internal guidelines'. The believer was informed that he or she has the right to receive information on the data being processed on him or her, and to request their correction or deletion. The data subject is required to provide information on his past mental hospital or psychiatric treatments, use of hard drugs, and his or her criminal record.

(470) 6.2.1.2 'Confidential Religious Folder Agreement'

(471) The form requires the provision of the following personal data: the name, address, signature of the data subject, the name and signature of the witness; in the case of a minor, the name and signature of the parent or guardian.

(472) The believer consents to the processing of his or her personal data by way of the following statement: 'I consent to the processing of my personal data, including sensitive personal data, that have been collected about me in relation to my participation in religious services in order to follow my spiritual development and to their use by the Religious Association of Scientology in Hungary Central Organization in possible future ethics or Scientology judicial cases. I understand that, in accordance with the purpose of data processing, the Central Organization assembles folders bearing my name, a Student Folder for religious training, a Preclear Folder (PC Folder) for auditing or for spiritual counselling, Ethics Folder for ethics or Scientology judicial procedures. These documents are confidential, and are the exclusive property of the Church of Scientology International.' The believer also consents, after 'coordination' with him or her, to the transfer of his or her folders to 'advanced level organizations for participation in religious services' and their storage there.

(473) According to the declaration, the personal data processed are kept as secrets of the confessional, and stored until the declaration is withdrawn. These data can only be accessed by religious persons 'concerned under external and internal guidelines'. The

believer was informed that he or she has the right to receive information on the data being processed on him or her, and to request their correction or deletion. The believer also declares that he or she consents to the recording of his or her auditing sessions, the electronic storage of his or her interviews, in order that the case supervisor or the auditor may make notes from them, and be able ascertain that the auditing the believer received was of 'standard' quality. These recordings are stored so long as they are relevant to the spiritual growth of the believer, thereafter they are erased.

(474) 6.2.1.3 'Religious Services Application Form, Agreement and General Release Declaration'

(475) This form requires the provision of the following personal data: the name, address, signature of the data subject, the name and signature of the witness; in the case of a minor, the name and signature of the parent or guardian.

(476) By signing the declaration, the believer acknowledges that he is aware that the purpose of the Scientology religious services is the provision spiritual assistance, and is not intended to diagnose and treat bodily harm, also declaring that he or she came not to be healed from disease. He or she has received information that the auditors use 'E-meters' for the religious services. He or she consents to the processing of his or her personal by way of the following statement: *'I consent to the processing of my personal data, including delicate personal data, that have been collected about me in relation to my participation in religious services of Scientology in order to follow my spiritual development and to their use by the Religious Association of Scientology in Hungary Central Organization in possible future ethics or Scientology judicial cases. I understand that, in accordance with the purpose of data processing, the Central Organization assembles folders bearing my name, a Student Folder for religious training, a Preclear Folder (PC Folder) for auditing or for spiritual counselling, Ethics Folder for ethics or Scientology judicial procedures. These documents are confidential, and are the exclusive property of the Church of Scientology International.'* The believer also consents, after 'coordination' with him or her, to the transfer of his or her folders to 'advanced level organizations for participation in religious services' and their storage there

(477) According to the declaration, the personal data processed are kept as secrets of the confessional, and stored until the declaration is withdrawn. These data can only be accessed by religious persons 'concerned under internal guidelines'. The believer was informed that he or she has the right to receive information on the data being processed on him or her, and to request their correction or deletion. The believer also declares that he or she consents to the recording of his or her auditing sessions, the electronic storage of his or her interviews, in order that the case supervisor or the auditor may make notes from them, and be able ascertain that the quality of the auditing the believer received was of 'standard' quality. These recordings are stored so long as they are relevant to the spiritual growth of the believer, thereafter they are erased. The data subject is required to provide information on his past mental hospital or psychiatric treatments, use of hard drugs, and his or her criminal record.

(478) 6.2.1.4 Documents with other Personal Data Drawn up during auditing

(479) The exact 'process' the PC received in the course of auditing is recorded precisely and in detail in the so-called auditor's report form. In many cases, the folder includes a checklist of questions which the PC goes through together with the auditor in the course of auditing. The worksheet with notes made throughout the full session from the beginning to end is put in the PC Folder along with the auditor's report form.

(480) a) As the auditor takes note of the question the PC is answering out of the series of questions in the worksheet, a single-word response can be of outstanding importance from a data processing point of view, because it may refer to personal or special data (for example: 'Q7: 8) A) Mother B) Did they have sex in the living room'; '8/A) [...] B) Was he caught smuggling drugs'; 'Q7: We stole with').

(481) The believers share extraordinarily many, often specially sensitive data during auditing sessions, such as the following:

- 'Once he was caught with a gram of grass, again along with his girlfriends. No report was made, they had to throw it away in the grass, and were reprimanded.'
- 'On [...] I was sitting on the loo, a guy was masturbating next door, I looked at him through a hole—much like porn I had seen my dad watching—and I felt I need to masturbate, later at home, I needed to stick the toilet brush in my arse.'
- '3 weeks ago in the [...] room she did abnormal sex with husband. Husband put hair spray bottle into her sex organ and play with for 15 min and after they did normal sex.'
- „I sat down at the computer and started looking for porn videos. It was not the first time that day and I also looked the night before, so I thought I could look at more videos now before I ejaculate.”
- '[...] I can't enjoy sex, that is to say I have never had orgasm with a guy, and this was a good reason to masturbate, [...] True, he was the only guy [...].'

(482) During auditing sessions, the believer/PC often speaks about other persons, and thus the auditor records the data of other, non-member persons, the personal and special data of third parties in the worksheets (e.g. 'Q6: XY? We were smoking some white cocaine-like dust (sic)'; 'Q7 Yes. I was with [...], and smooched and drugged.')

(483) In its order number NAIH/2017/148/17/H, the Authority requested the Data Controllers to submit all the forms and documents on the basis of which ministers/auditors conduct individual auditing sessions and ask questions during sessions. In Annex II.16–19., the Authority provides a detailed list of the documents (command sheet, process checklist, etc.) used for or during procedures/auditing (e.g. False Purpose Rundown; Confessions; Happiness Rundown; Asthma and Allergy Rundown; Repair List for Treatments done by psychiatrists, psychologists and psychoanalysts; and documents for procedures required for each level, etc.). In the response to the order above, the CSH and CSH Central Organization refused to submit the aforementioned, claiming that the requested information and documents are exclusively religious, are protected by the Church, and stated they are not in a position to hand over to the Authority the internal rules and the directives of the Church and the books on all methods. They also stressed that 'understanding these methods requires special training and knowledge, and what the Authority requires of us would require tens of thousands of pages to answer'.

(484) In view of the fact that the auditing documentation and series of questions included in the PC Folders seized were enough to reveal the facts of the case, the Authority abstained from examining these documents.

(485) In the course of or after an auditing an *Auditor's Report Form* is this filled in, which is then placed above the worksheets of the session. The cover page of the auditor's report form includes the following:

- Name of PC,
- Name of auditor,

- Time of session,
- Duration of session,
- PC level,
- Designations (types) of processes, the time of their beginning and end, the position of the E-meter tone arm, the level of sensitivity, as well as a summary of the session and other notes.

(486) The worksheet contains notes made throughout the session, from the beginning to end.

(487) Another characteristic document of the PC folders is the O/tech, Overt-Withhold document.

(488) This is for writing up the aggressive acts of a person and their withholdings in a specific form. By destructive act, the Church of Scientology means a harmful act or a violation of the moral code of the group. A harmful act is a person's act that causes damage or spoil to someone else, some others, their relatives or to their property, whether he or she intended or not.

(489) Writing up aggressive acts and their withholdings in this way is bound to include the processing of third party personal and often special—sex life and health-related—data (for instance: 'When 19, I moved to Budapest with two friends, [...], to a one-room flat in [...] street, and we sold about half a kilo of grass in three months through [...]').

(490) A PC can start an O/W write-up with a special permission, or may receive an instruction from the auditor to do so. In such a case, the auditor may give the PC specific instructions on what the O/W write-up should aim at. In writing, the PC puts down the exact time the given act or omission occurred, and describes in detail what was wrong about it, what was the harm in it. In almost all cases, O/W write-ups contain third-party data or personal data of family members, relatives, or the personal data concerning health condition, pathological addiction, and sex life (for example: 'I cheated on my friend [...] having sex with a man, and I never told my friend.' The data subject then details that this came about during a holiday with the bus driver. Later on, she describes a similar case with her former boss.)

(491) **c)** There may be several types of document in a PC Folder which are placed in it depending on the type of auditing process undertaken.

(492) Such are for example the various lists (Correction, L&N), the forms of specific questionings and interviews (including questions the auditor has to ask and the worksheets of sessions), forms for co-auditing, other worksheets, and mixed reports. These reports have important information about the PC, usually for the case supervisor. According to the CSH, it is important to put these in their proper place in the folders, and they must not be disregarded when reviewing PC Folders.

(493) Such a document may be the '*D of P Interview*', which is made for a special type of auditing conducted by the Director of Processing of the organization with the given PC. It is used to obtain data otherwise unavailable for the case supervisor. The interview takes place with an E-meter, and the worksheet made is placed in the PC Folder.

(494) The PC Folders may also include so-called Knowledge Reports written by staff members when in the possession of information on the PC they want to let the ethics officer or Ethics Section know. These include data on the lifestyle, work, duties done in the CSH, love relations, and family of the PC (e.g. 'It turned out in MWH that [...] earned 4 million forints in the company last year (2014), and he picked up 1.6 million without

- paying not one forint of taxes'; or '[...] thought she had some gynaecological problem, and didn't use the toilet at her workplace, and as result she peed in a store one day').
- (495) A part of the reports primarily kept in the Ethics Folders is placed in the PC Folders, too. These are addressed to the Ethics Officer, Ethics Section, on the inappropriate use of a procedure or the wrong conduct of a Scientologist, who is in breach of the norms and ethical principles of the Church.
- (496) The PC Folders furthermore include documents and summaries (e.g. Original Assessment Sheet) providing vital information on the PC to the case supervisor, the Director of Processing or the auditor, such as: the PC's use of alcohol, drugs, medicines; former and current diseases; former surgeries, current physical condition, mental treatments received, etc., e.g.: 'Do you take alcohol or alcoholic drinks?' 'What alcoholic drinks have you drunk? Dates (for how long?)'; 'List accidents, surgeries, diseases'; 'List the recently and formerly used medicines'; 'What medicine? Dates (for how long)?' (Attached to the completed document, there is a list of 28 questions on two letter-size pages) 'What is (was) your relationship like with your father?'; 'Do you have brothers and sisters?' If yes, find out their names and whether they are alive or not...'; 'Do you have any other relatives? If yes, find out their names and whether they are alive or not...').
- (497) A PC Folder generally includes a summary (FES Summary) containing ethics data on the PC, that is any event that the CSH judges to be undesirable or such personal and special data whereby CSH deems the PC to be a 'potential trouble source' (PTS)⁴³, and records of this fact, as well. In many cases, the PC must give detailed accounts of his or her use of drugs, medication, and alcohol by filling in these summaries and datasheets (for example: 'Has the PC used drugs or alcohol? (Including hallucinogenic drugs, street drugs or medicines)'; 'Does the PC have a hard-drug or alcoholic past?'; 'The PC still gets easily sick, often falls ill, and takes different medicines at such times').
- (498) **6.2.2 The Detoxification Programme—Data Processing Related to the Detoxification Programme**
- (499) The PC Folders also contain documents made in the course of the PC participating in detoxification programmes (otherwise 'Purification Rundowns' or 'Purification Programmes'). These consist in diets, consumption of defined types and quantities of vitamin, taking saunas and physical exercises, and their aim is—according to the Church of Scientology—to purify and clean the human body of chemical and drug residues that might obstruct reaching the results of Dianetics or Scientology auditing/processing.
- (500) The legal basis of the Church processing of data in relation to detoxification programmes is the consent by the data subject, which includes the completion of the '*Detoxification Programme Application Form, Agreement and General Release Declaration*' and signing the following forms: '*Medical Examination for Detoxification Programme and Physician's authorization to participate in it*', '*Religious Services Enrolment Application Form, Agreement and General Release Declaration*' and '*Confidential Religious Folder Agreement*'.
- (501) As the latter two documents were discussed under points IV.6.2.1.2 and 6.2.1.3, this point examines only the documents used specially for the detoxification programme.

⁴³ A PTS means a person connected to a Suppressive Person, that is a person or a group of persons who are against Scientology, who reject its principles and beliefs, or who the CS regards destructively antisocial. According to the CS, crimes are committed by Suppressive Persons.

(502) 6.2.2.1 'Detoxification Programme Application Form, Agreement and General Release Declaration'

(503) The form requires the provision of the following personal data: the name, address, signature of the data subject, the name and signature of the witness; in the case of a minor, the name and signature of the parent or guardian.

(504) The following declaration is included in the form: *'I understand that the detoxification programme is a RELIGIOUS SERVICE the purpose of which is to free the individual from the traumatic and distracting effects that drugs and toxins have on the spirit. The detoxification programme was not designed to treat any physical disease or condition, to diagnose or cure, as these matters are the exclusive business of my physician and myself'. [...]*

(505) *'I hereby state to the Central Organization that I am physically fit to participate in the detoxification programme. My health condition is good; I take no medicines; I am not pregnant; I am not diabetic, not anaemic; I have no serious physical problem, nor any vascular system, heart, kidney, liver disease/problem, and I have no reason to believe or suspect that I have any such problem.'*

(506) 6.2.2.2 'Medical Examination for Detoxification Programme and Physician's Authorization to Participate in It'

(507) The application form presented in the previous point must be supplemented by a form called *'Medical Examination for Detoxification Programme and Physician's authorization to participate in it'*. This is completed by a physician, and includes the personal and special data⁴⁴ of the PC (e.g. blood pressure; 'Are there any symptoms of anaemia, heart, liver disease, diabetes?'; 'Have you ever used drugs?'; 'What alcohol have you taken since your childhood up to now?'; 'What medicines have you taken since your childhood up to now?'; 'Have you had any surgery? What operation was it? Were you narcotized or anaesthetised?'). The form also includes the physician's statement whether in his or her view the patient can participate in the programme, and, thereafter, a declaration stating that there is no reason why the patient could not fully participate in the programme, or a statement to the effect that the patient's health condition is not apt for participating in the programme. Finally, the physician may suggest constraints and/or physical exercises and/or a diet whereby the not fully healthy person might become fit enough for participation in the programme.

(508) The front page of this form includes the following legal notice of consent to data processing: *'I acknowledge and accept that my personal data, including my special data (e.g. medical data), may be processed and stored for the purposes of the detoxification programme provided by the Religious Association of Scientology Central Organization until I withdraw this declaration in writing.'* The complete blood count and electrocardiogram of the PC is attached to this declaration. The physician hands the form with the medical reports over to the patient, who then passes it on to the person in charge of the programme, and thereafter the documents are placed in the PC Folder.

(509) By signing this declaration, the PC consents also to 'the religious persons' involved in my spiritual progress' accessing his or her data. He or she also declares that he or she was duly informed of his or her rights to informational self-determination, including, as

⁴⁴ Section 3 (3) of the Privacy Act provides: "'special data" shall mean: [...] b) personal data concerning health, pathological addictions, or criminal record'.

per the Privacy Act, to request information on the data processing, to correct or delete processed data.

(510) 6.2.2.3 Other Documents with Personal Data Made During the Detoxification Programme

(511) Before starting the Detoxification programme, a form called 'Starting the detoxification programme' is filled in, containing the personal identification data and other personal data of the PC. During the detoxification programme, the PC completes a Daily Report Form at the end of each day, detailing his or her niacin, vitamin, mineral, oil and food consumption, recording his or her weight, daily sleep amounts, and all the details about his or her reactions to niacin.

(512) The daily reports are sent to the case supervisor of the programme in charge of the progress of the PC during the programme. The case supervisor instructs the PC on the basis of the information in the Daily Report.

(513) 6.2.3 Examining the data content of the reviewed folders, the Authority has found that the following types of data were recorded in the course of the various auditings and auditing procedures in the PC Folders:

- personal identification data,
- other personal data,
- personal data of third parties, personal data of family members and relatives,
- medical condition,
- personal data relating to sex life,
- personal data on pathological addiction ,
- criminal personal data,
- data of members of law enforcement agencies,
- political opinion or party affiliation,
- religious or other convictions of worldview,
- personal data on persons under the age of 16.

(514) 6.3 Findings

(515) 6.3.1 The data subject's consent during the detoxification programme, the data processing of detoxification

(516) 6.3.1.1 The legal basis of data processing by the Church is the data subject's consent in respect of the detoxification programme. The applicants to the programme are requested to fill in the forms presented in the point before, to which the data subject's full blood count and electrocardiogram reports are attached.

(517) 6.3.1.2 The examination of data processing

(518) The opinion of the Authority concerning the medical examination preceding the start of the detoxification programme is as follows:

(519) As expounded in point 5.2.3 of this Decision, each stage of each data processing must have a lawful purpose (Section 4 of the Privacy Act) and a legal basis (Section 5–6 of the Privacy Act). With regard to the processing of special data, the Section 5 (2) of the Privacy Act states: *'Special data may be processed according to Section 6, and under the following circumstances: a) when the data subject has given his consent in writing [...], c) when processing is necessary for the performance of a task carried out in the public interest concerning the data under Point 3. b) of Section 3.'*

(520) On account of the Church processing medical data, the special sectoral legislation must also be considered when processing medical data, sectoral data.

- (521) The processing of data obtained during healthcare activity⁴⁵ is regulated by strict rules, Act CLIV of 1997 on Health in particular (hereinafter the Health Act) and Act XLVII of 1997 on the Processing and Protection of Health Care Data and Associated Personal Data (hereinafter the Health Data Act).
- (522) Prior to starting to process data, the data controller must define the precise purpose for which the collection of data is necessary, and then define the range of data needed for achieving the purpose.
- (523) The designated purpose in this case is the provision of a religious service that, as stated in the declaration in the application, has no medical aspect—not being the cure, treatment, diagnosis of the data subject. One can participate in the programme if a physician has examined his or her condition, and found it fit.
- (524) Section 4 of the Health Data Act details the processing of health data. Subsection (1) details the purposes of data processing within the healthcare network⁴⁶, subsection (2) discusses the purposes of data processing under other laws, while subsection (3) states: ‘health and personal identification data may be processed for purposes other than those under Subsections (1) and (2) with the written consent—based on appropriate prior information—of the data subject or his or her legal or authorized representative (hereinafter authorized representative)’. In view of the fact the Data Controllers are not entitled to process data under Subsections (1) and (2), this can only be carried out for purposes under Subsection (3) with the written consent of the data subject.
- (525) The Authority analysed the requirements of the concept of consent in point IV.5.2.3 of the Decision. The application of Section 3 of the Health Data Act is therefore conditional on the provision of prior information to the data subject, which includes the precise specification of the purpose requiring the processing of data giving detailed information on the medical condition of the data subject and the medical reports thereof by the Central Organization of the Church. The notice providing full prior information must be a document separate from and worded independently of the of legal statement of consent, as the Authority spelled out in its recommendation on the data protection requirement of prior information.⁴⁷
- (526) The Authority found no provision of information among the statements examined or the documents that would meet this condition, explain why it is necessary to process health data in order to perform a religious service, when, particularly, the Church does not assume responsibility for changes in medical condition, it does not cooperate in the event of a change, and, in its opinion, it does not provide health service. The declaration included in the application form states: *‘The detoxification programme was not designed*

⁴⁵ Section 3 y) of Act CLIV of 1997 on Health states: ‘healthcare activity shall mean all activities provided as part of healthcare services except those that do not require:

ya) professional healthcare qualification or

yb) supervision by a person with professional healthcare qualification’.

⁴⁶ Section 4 (1) of the Health Data Act stipulates: ‘the purpose of processing the health and personal identification data shall be as follows:

a) the promotion of protection, improvement and sustenance of health,

b) the promotion of successful medical treatment activity of the healthcare provider including professional supervision,

c) monitoring the medical condition of the data subject,

d) taking measures in the interests of population [section 16] and public health, as well as epidemics,

e) enforcing the rights of patients.

⁴⁷ <http://naih.hu/files/tajekoztato-ajanlas-v-2015-10-09.pdf>

to treat any physical disease or condition, to diagnose or cure, as these matters are the exclusive business of my physician and myself. Therefore, I am aware that no religious person or other representative of the Central Organization has the authority to either: (a) prescribe medicines, or treat any physical problem in any other way, or b) make a statement or promise for any bodily advantage, gain or other result which may result from participation in the detoxification programme. I also acknowledge that no religious person or other representatives of the Central Organization have made such a statement.' [...] 'I hereby consent to incurring all the risks of injury and harm that may result from my participation in the detoxification programme.'

- (527) According to the finding of the Authority, the fact that the religious organization processes health data for non-health purposes, while indicating that the purpose of data processing is a religious service, is contrary to the principle of purpose limitation within the meaning of the Privacy Act. In the opinion of the Authority, participation in the programme does not require the Church's processing of the data of the full medical check-up and medical reports, given that the data processing has no declared purpose of treating or curing any changes in the medical condition of the data subject, necessitating the knowledge and use of check-up data by the Church.
- (528) It is also apparent from the course of the programme that the data of the health check-up will not be used later; during the programme, the data subject's own experiences, as well as that of case supervisor and his instructions are recorded. In the event of any changes in medical condition resulting from the activity requiring assistance, the data subject must seek medical care as per the information given.
- (529) In order to participate in the programme, it is necessary for the Central Organization to know whether the applicant is medically fit or is fit with constraints for the activity. The physician examining the data subject declares that he or she knows the details of the programme, the physical strain the participants undergo, and also has the opportunity to comment on and suggest conditions for participating in the programme. Thus, essentially the submission of the physician's opinion on page 6–8 of the document called '*Medical Examination for Detoxification Programme and Physician's authorization to participate in it*', which does not include the medical data of the data subject, would suffice to achieve the purpose of the programme.
- (530) Under the statement of consent, the health data and the records of the medical check-up, may be processed by the examining physician or the medical service provider merely by transferring the information that the data subject fulfils the conditions of participation in the programme or not, but the full content of the declaration together with the detailed data on the medical check-up and medical reports should not be handed over to a religious organization in the opinion of the Authority.
- (531) On the basis of the aforementioned, it can be concluded that the information provided, on which the consent is based, is incomplete and misleading, it does not indicate the purpose of the data processing, or, rather, the purpose of the data processing is not genuine, the purpose of the activity does not necessitate the processing of collected special data by the Church, whereby the Church violated Sections 4 (1) and (2) and 20 (2) of the Privacy Act.
- (532) In the case of misleading purpose specification, even though the data subject consented to it, health data must not be processed pursuant to Section 4 of the Health Data Act, because the conceptual element of appropriate information complying with

the requirement of consent is missing, and the requirement of purpose limitation is breached.

- (533) In view of the above, the Authority finds that Section 5 (2) (a) of the Privacy Act is not applicable as legal basis for the processing of special data, nor can a legal basis within the meaning Section 5 (2) (c) of the Privacy Act be found in the Church's data processing, taking also into account the fact the purpose of data processing designated by the Church is a religious service, and that this purpose cannot be adapted to other purposes under either Section 4 (1) of the Health Data Act, concerning data processing within the healthcare network, or Section 4 (2) of the Health Data Act. Moreover, consent based on Section 4 (3) of the Health Data Act as a legal basis does not apply on the grounds presented above.
- (534) On account of the aforementioned, the Authority, in the operative part of this Decision, prohibited the processing of health data, and, appropriate legal basis lacking, ordered the erasure of data processed in this way.
- (535) 6.3.1.3 A further disputed issue of data processing is as follows:
- (536) According to the formulation of application form, the data subject applies to participate in the detoxification programme religious service at the CSH Central Organization. According to the statement on the first page of the medical examination, the data subject acknowledges and accepts that his or her personal data, including his or her special data, will be processed and stored for the purposes of the detoxification programme provided by the Religious Association of Scientology Central Organization until he or she withdraws the declaration in writing.
- (537) According to these two formulations the data controller is the Religious Association of Scientology Central Organization.
- (538) The data found and recorded during the medical check-up or examination of the data subject and the medical records attached contain data which constitute medical documentation. The Health Data Act regulates the storage time of medical documentation in Section 30⁴⁸ by defining the mandatory storage time.
- (539) In contrast, the data subject, according to the statement of consent, may request the deletion of his or her health data by withdrawing the statement of consent or a deletion request⁴⁹.
- (540) The scope of the Health Data Act extends to: 'all organizations and natural persons providing healthcare and providing their professional supervision (hereinafter the healthcare network), as well as all legal persons or organizations without legal personality and natural persons who process health and personal identification data (hereinafter other data controller organizations).⁵⁰

⁴⁸ Section 30 (1) of the Health Data Act states: 'Medical documentation, with exception of images produced medical imaging, of the records made thereof and of Subsection (7), shall be kept for at least 30 years from recording, final reports shall be kept for at least 50 years.'

⁴⁹ 'I acknowledge and accept that my personal data, including my special data (e.g. medical data), may be processed and stored for the purposes of the detoxification programme provided by the Religious Association of Scientology Central Organization until I withdraw this declaration in writing. The religious persons involved in my spiritual progress may have a access to my data. I was duly informed of my right under the Act on the Right of Informational Self-determination and on Freedom of Information to request information on the data processed and stored on me, and I have the right to have these corrected or deleted.

⁵⁰ Section 2 of the Health Data Act states: 'The scope of this Act extends to:

a) all organizations and natural persons providing healthcare and those involved with their professional supervision (hereinafter the healthcare network), as well as all legal persons or organizations without legal

- (541) According to this provision, the provisions of the Health Data Act apply to the processing by the Church of health data collected during the medical check-up, the medical reports.
- (542) A legal anomaly arises if the data subject may request the erasure of the data that the data controller is obliged by law to store. This situation can be readily resolved if the health data is not processed by the religious organization, but is stored by the healthcare provider, which is obliged to comply with the conditions of processing health documentation, and thus is bound by the provision on storage time.
- (543) 6.3.2 Data Processing During Auditing
- (544) 6.3.2.1 According to the letter dated 20 January 2017 by the CSH Central Organization, a PC Folder is made for the data subject when he or she undergoes any introductory auditing. To do so, he or she is required to fill in the declaration presented in point VI.6.2.1. It is important to note that, during the data processing activities based on this, the believer consents to not only the processing of the data collected in the given document but also to the processing of data related to certain services and collected by way further documents to be filled in (see IV.6.2.1.4), as well as the processing of personal data collected by recording what was said during auditing sessions.
- (545) Having examined the documents entitled 'Basic Scientology Services Application Form, Agreement and General Release Declaration', 'Confidential Religious Folder Agreement', and 'Religious Services Application Form, Agreement and General Release Declaration', the Authority found that they are almost literally the same in terms of data processing circumstances, and so it analyses them in the following simultaneously.
- (546) **6.3.2.2** In the case of the data processing based on each of three documents, legal basis is the consent under Article 5 (1) a) of the Privacy Act. Section IV.5.1.3. of this Decision gives a detailed description and analysis of the definition of consent within the meaning of the Privacy Act. In the following, the Authority examines compliance with requirements of prior information under Sections 20 (2) and 15 of the Privacy Act.
- (547) **a)** With regard to the identity of the data controller, the Authority refers back to the discussion in Section IV.2.3 of the Decision. On that basis, the Authority does not consider the identification of the data controller by the notices examined as appropriate, because it is unclear, and therefore the data controller fails to provide information in this regard. The notices are defective also in not indicating the full contact details of the data controller, since in this case it is required to give both postal (official mailing address) and electronic (e-mail) address. The notice must also indicate the address of the website of the data controller, because it is the most straightforward way to ensure the continuous availability of the data processing notice whereby data subjects can easily and simply obtain information on the circumstances of processing their personal data.
- (548) **b)** The notices are also very reticent about the purpose of data processing. Two data processing purposes can be discerned from documents; one is following the spiritual development of the believer, and the other is ensuring that the data collected

personality and natural persons who process health and personal identification data (hereinafter other data controller organizations),

b) all natural persons who have been or will be connected with or use the services of the healthcare network or other data controller, irrespective of him or her being ill or healthy (hereinafter the data subject),

c) data processed under this Act, the health and personal identification data of the data subject.'

can be used in possible future ethics or Scientology judicial procedures. In the opinion of the Authority, neither of these formulations gives an accurate picture of the purpose of data processing, because it does not specify the need for processing personal and special data the various data submission sheets and auditing sessions record. In the case of a complex data processing that treats a great many personal data, such as the data processing under consideration, the purpose of the data processing, the range of data processed in relation to that, as well as the way those are used to achieve the purpose specified must clearly and far more understandably be stated. It is only in this way that the data subject can decide whether to give his or her consent to the data processing.

(549) **c)** According to the notices under examination, personal data recorded in PC Folders can be accessed by persons 'concerned under internal guidelines'. According to the opinion of Authority, these notices therefore do not indicate precisely which Church persons, officials or staff members are entitled to access the data. In the opinion of the Authority already stated, the precise identification of the group of persons entitled to access data in the case of the CSH Central Organization is of utmost importance, because the organization processes a very large number of personal and special data, and the unauthorized access to such data can have a significant impact on the right to informational self-determination and privacy of the data subjects. Furthermore, it is also necessary that the notices mention what data processing operations can be performed on the personal data by persons and organizations that access them.

(550) **d)** In the context of transferring data, the forms state that data may be transferred to any Church of Scientology for the data subject's participation in religious services after 'coordination' with him or her. However, according to the Authority, a consent to data processing does not also mean consent to the transfer of data. In the case of data transfer, a separate statement of consent is required, and therefore detailed and accurate information must also be provided about which organization(s)—with contact information duly indicated—may receive the data and for what purpose. It is only in the knowledge of these that the data subject can decide on giving his free consent to the transfer of his data to other bodies.

(551) **e)** The notices fail to provide full information on the rights of the data subjects and the remedies open to them. The only reference the forms examined contain is that the data subject has the right to request information about the data processed on him or her, and to request their correction and deletion. This provision of information likewise does not meet the requirements of the Privacy Act. In providing the information about the rights of the data subject, the data controller must specify the contact details where he or she may submit a request and the period available for the data controller to comply with the request in question. In addition, it is expedient to delineate the content of individual rights, as well, because private persons may not recognize their individual rights by their designations.

(552) From among the possibilities of enforcing rights, the data controller must provide information on the possibility of initiating two proceedings. On the one hand, it must call the attention of the data subject to the fact that he or she can initiate proceedings by the Authority. The data controller must indicate in the notice the official electronic and postal address, the telephone number and the address of website of the Authority. On the other hand, it must inform the data subject of the possibility of bringing the case to court. In this case, it must mention the particularity that the data subject may decide to initiate the proceedings before the court of domicile or residence.

(553) On the basis of the foregoing, the Church does not provide sufficient information on the identity of the data processor, the purpose of the data processing, on which Church persons, officers and staff members precisely are entitled to access the personal data in the PC Folders, moreover it provides information on neither the data transfer nor the possibilities of enforcing the rights and of pursuing remedies by the data subjects, whereby it breached Section 20 (2) of the Privacy Act and, by the insufficient provision of information, it violated the requirement of prior information under Section 3 (7) of the Privacy Act.

(554) **f)** The Authority has found that the Church processes special data during auditing, where neither the required authorization by law nor consent by the data subject (Section 5 (2) of the Privacy Act) could be verified, and therefore the findings with regard to the processing of special data expounded in point 6.3.2.1 of this Decision also apply to the processing of data during auditing.

(555) On the basis of the above, it is found that the Church processes the personal and special data of applicants without appropriate legal basis, whereby it violates Section 5 (1) and (2) of the Privacy Act.

(556) 6.3.3 The Processing of the Data of Third Parties⁵¹ in the Documents in the PC Folders

(557) **6.3.3.1** According to the definitions of the Privacy Act, any data in the PC Folders which applies to a person other than the PC is to be deemed a third party and personal data relating to a third party. This includes, for example, data on the PC's relatives, friends, acquaintances, and love partners. It was found in several instances, that the Church processes the special data for third parties in some documents—typically O/W write-ups, some auditing sessions, case inventories, etc.—though it had no consent to do so by the data subjects.

(558) **6.3.3.2** According to the principle of fair data processing⁵², the collection and processing of personal data must be fair and lawful. The right to protect personal data is violated by data processing if the data controller, although his procedure formally complies with the applicable requirements of law, processes personal data in an unfair way.

(559) The principle of purpose limitation⁵³ in data processing is one of the most important, internationally elaborated, principles of data processing, whereby personal data can only be processed for a specific purpose. The purpose must be socially justified, it must be the exercise of rights or compliance with obligations. Each stage of the data processing, e.g. data transfer, must also comply with the purpose of data processing. The purpose of the data processing must be defined in advance and communicated to the data subject who, in the knowledge of the purpose of the data processing, can thus appropriately exercise his or her right to informational self-determination.

(560) According to the principle of data minimization,⁵⁴ the purpose of data processing determines the range of data subjects included in the data collection, and therefore the only types of personal data that may be processed are the ones essential for achieving

⁵¹ Section 3 (22) of the Privacy Act says: "'third party" shall be any natural or legal person, or organization without legal personality other than the data subject, the data controller or the data processor'.

⁵² Section 4 (1) of the Privacy Act.

⁵³ Section 4 (1) of the Privacy Act.

⁵⁴ Section 4 (2) of the Privacy Act.

the purpose of the data processing, and are appropriate to achieving that purpose. Thus, complying with this principle guarantees that the narrowest range of data, only a justified range of data, will be processed for the purpose of the data processing. The principle of data minimization furthermore excludes data processing for the purposes of 'stockpiling', i.e. data must not be collected exclusively for purposes to be defined later.

- (561) **6.3.3.3** By processing the data of third parties, the Church has violated the principle of purpose limitation in data processing under Section 4 (1) of the Privacy Act. In the opinion of the Authority, the CSH Central Organization processes the personal data of third parties without specified purpose and provision of prior information.
- (562) If data processing has no lawful purpose, it is to be deemed unlawful in accordance with the aforementioned. At the same time, it cannot be left out of account that the Church not only fails to inform these third parties of the circumstance of data processing, but also processes these data without these persons knowing anything at all about the Church's processing their data.
- (563) By processing data without the provision of information, the data controller, the Church, acquires a 'dominant informational position', which is extremely damaging to the protection of personal data and the right to privacy of these third parties, they cannot enforce their right to informational self-determination, and, besides, the data processing is qualified as unfair. Due to the absence of prior information, the requirement of the consent being freely given and explicit is also not met. Concerning consent, it should also be noted that a data subject's, the PC's, consent cannot bear the interpretation that it applies to another person, that it is made instead of a third person, and thus the PC's consent cannot be construed as the consent of a third party.
- (564) Collecting and recording the data of data subjects who qualify as third parties not being in any legal relation with, not being members of, the Church is also objectionable, because there is no lawful or acceptable purpose that unconditionally necessitates or at least renders acceptable the processing of their personal, often special data. Recording certain persons' data for a purpose they have nothing to do with or because of a legal relationship or a consent that does not apply to them cannot be justified and is wholly unnecessary, moreover it means an unwarranted infringement of their privacy.
- (565) Respecting the right to privacy of the data subject in no legal relationship with, not being a member of, the Church has priority over the interests of the CSH or the PC sharing the data in the course of a procedure. The CSH may record and process data in relation to providing religious services whereof it has a valid legal basis. These data may not be supplemented by personal data that qualify not as the personal and special data of the PC providing his or her consent to the data processing but as those of a possible non-'believer'.
- (566) *The SCH may therefore not connect the personal and special data of the PC to the personal and special data the PC gives of persons living in his or her environment, because processing the personal data of persons with no legal, membership, relationship with the Church of Scientology violates the principles of purpose limitation and necessity.*
- (567) As a consequence of the aforementioned, the Church violated the principles of purpose limitation and necessity in data processing within the meaning of Section 4 (1)–(2) of the Privacy Act by processing the personal and special data of third parties. The Authority has found that the data subjects received no precise information as to what personal data of theirs is being used for which purposes.

- (568) In addition, it is also without appropriate legal basis that the Data Controllers process the personal and special data of third parties, because none of the conceptual elements of the legal basis they indicate, consent, is met: third parties receive no prior information; it is not freely, themselves personally, that they give consent to the processing of their personal data, and consequently a further conceptual element, consent being explicit, cannot be effected. Since no other legal basis can be established—such as a law requiring the processing of these data on the basis of public interest—the Church violated Sections 3 (7) and 5 (1)–(2) of the Privacy Act.
- (569) **6.3.4** The Authority examined the documents presented in point IV.6.2.1.4 containing the personal data of believers.
- (570) These documents (records, called Auditor Worksheets taken down during auditing sessions, believers' voluntary 'confessions' such as the write-ups of harmful acts, various lists, knowledge reports, and other ethics reports) include great amounts of —often— highly sensitive data. The 'confessions', self-revelations, listed here recount the various sins—in certain cases, crimes—the believers committed, the most minute moments of their lives, work, family and sex lives, relationships, or even financial situation in extreme detail. The detail of these accounts is very likely influenced by the fact these confessions are made alongside the directed questions of a trained auditor and the use of an E-meter and its signals.
- (571) These accounts and the consequences that can be drawn from them on the data subject qualify as personal data, and, by specifically naming third parties, they result in, as discussed in the previous point, the Church processing the personal and special data of third parties.
- (572) As pointed out in IV.6.2.1.1–IV.6.2.1.3, the purpose of processing the personal data related to the participation in religious services of those that sign the declaration is in order to follow their spiritual development and to use in possible future ethics and judicial actions. In the course of the proceedings, the violation of the principle of necessity as laid down in Section 4 (2) of the Privacy Act emerged in view of the fact that the personal and extremely sensitive data are processed in great detail in writing and that the group of persons who have access to the data is not regulated appropriately.
- (573) In order to clarify this matter, especially in its Order no. NAIH/2017/148/17/H, the Authority invited the Data Controllers to present what purpose they use these data and have access to them for. In their letter dated 24 April 2017, the Data Controllers failed to provide full information on the necessity and principles of processing the said data by reference to the fact that, on the one hand, it would be impossible to attach the documents due to their size, and, on the other, they are related exclusively to religious activity, and the Data Controllers are not in a position to hand over to the Authority the internal rules and the directives of Church and the books on all methods.
- (574) On account of the fact that the necessity of processing these data of the believers and the lawfulness of this method of processing could not be fully clarified, the Authority did not set forth any findings on this question.
- (575) **6.3.5** With regard to the access to PC Folders, the Church provided the information that *'only ministers may be acquainted with the contents of these folders'* and *'they can be accessed only by the minister providing the given service (i.e. the proceeding minister, the case supervisor). No one else can have access to the Preclear Folder.'* As a consequence, the believer concerned, i.e. the PC, cannot have access to his or her folder.

- (576) This is also corroborated by the internal guideline of the Church entitled 'HCO Bulletin of 29 October 1987' on keeping the PC Folders. Page 1012 of this states the following: *'The pc's audited folders are never handed to the pc'*.
- (577) This however is a grave limitation of the right to access laid down by Section 14 of the Privacy Act.
- (578) It is part of the right to informational self-determination of the data subject that he or she be able to track and control the entire path of data processing, that is, he or she has the right to know who uses his or her data, and when, where, and why so.
- (579) As a consequence, the believer may request information on his or her personal data processed in connection with the religious activity in his or her PC Folder or, as a matter of fact, any other, staff or ethics folder; that is, he or she has the right to look into the Church folders made on his or her spiritual or mental development, to know the personal and special data related to him or her, and, on request, may obtain copies of the documents and notes containing his or her data.
- (580) On account of the fact that the Church does not ensure this with regard to PC Folders on the basis of its declarations mentioned above and its internal regulations, it breached the right of data subjects under Section 14 of the Privacy Act.
- (581) **6.3.6** According to the opinion of the forensic expert assigned by the Authority, the Data Controllers carry out healthcare activities in the course of the detoxification programmes and auditing, the exercise of which requires appropriate qualifications and personal licenses naming the activity.
- (582) With regard to the control of the organs and institutions of the healthcare network, Act XI of 1991 on the Supervisory and Administrative Activities of the Healthcare Authority (hereinafter the Healthcare Authority Act) empowers the state healthcare authority to supervise compliance with the laws relating to the operation of healthcare institutions.
- (583) Section 8 (1) of the Healthcare Authority Act states: *'Within its scope of healthcare administration and coordination, the state healthcare authority shall authorize, unless otherwise provided by law, the healthcare provider's activity, keep record of the healthcare providers, their organizational units, their licensed professions and the activities authorized to be carried out within a given profession, the licenses authorizing healthcare services, and the data of medical personnel performing healthcare activities on behalf of healthcare providers in connection with the healthcare activities.'*
- (584) On account of the fact that the Authority is not competent to decide whether the activity of the CSH and SCH Central Organization qualifies as healthcare activity or not, it initiated proceedings thereof by the Healthcare Administration Department of the Deputy State Secretariat for National Medical Officer Duties.
- (585) 7 Data processing in Ethics Folders**
- (586) The purpose of the ethics procedures the Church uses and the Ethics Folders is to help *'the person return to honesty and uprightness, be able to progress towards total spiritual freedom'*. The ethics and judicial actions with this purpose result in various documents (reports, records and results of ethics procedures), on the basis of which the data subject receives treatments. These documents are kept in the Ethics Folders, which, as the declarations state, are protected by the seal of confession because *'the person shares ethics and moral information, reveals his or her sins, which can be regarded as a confessional process'*. Accordingly, only the persons conducting ethics procedures and case supervisors have access to them.

- (587) **7.1** According to the statement of 20 January 2017, Ethics Folders are created upon completion of the forms entitled '*Basic Scientology Services Application Form, Agreement and General Release Declaration*' and '*Confidential Religious Folder Agreement*', because i by signing these the data subjects consent to the processing of their personal data included in them.
- (588) These two documents are presented in points IV.6.2.1.1 and IV.6.2.1.2.
- (589) **7.2** The Authority reviewed the Ethics Folders it seized and took custody of, and the characteristic documents in them—as in the case of the rest of the folders—are listed in the Annex of this Decision. From among them, the Authority highlights the following types of document containing personal data:
- (590) **7.2.1** Knowledge Reports, mixed and other reports
- (591) These make up the bulk of the Ethics Reports. As mentioned in the section PC Folders, believers write various reports on each other in these, calling attention to the irregularities of others' lifestyle, work, duties done in the CSH, and lover relationships. The reported irregularities range from insignificant 'sins', such as being 5 minutes late from a lecture or a conduct disturbing others' in their study time, to others' health, financial or sex life, even crimes a believer committed.
- (592) These reports can be based on auditing sessions, various tests, or even casual conversations or information heard from another. Reports are included in the Ethics Folder of the believer concerned, and he or she must 'treat' these unethical acts according to the rules of Scientology. In this, believers are assisted by ethics officers, who compile various ethics programmes for them.
- (593) A recurrent problem in the Ethics Folders is the way believers treat their finances . There are regular records in the files of the debts (dues to tax authorities, private individuals or arrears) and loans of the believers. In many cases, private individuals are mentioned by name, but there even was an acknowledgement of receipt in a folder that the debtor had returned a loan to a third person, including the lender's place and date of birth, identification card number, tax identification card number, and address.
- (594) Believers are expected to provide solution plans for these problems, which include business plans and the names of business partners.
- (595) In several cases, folders not only contain references to situations and sins brought up during auditing sessions but also the records of the auditing sessions.
- (596) The following are examples from reports found by the Authority:
- 'He imagined his aunt naked, and these images came up during masturbation [...].'
 - '[...] was selling black-market stuff, things used and smuggled, and never paid taxes.'
 - 'He took girlfriends to their apartment, and [...]said they were into 2D things, though the kids could have overheard [...].'
 - '[...]
 - [...] sold an invoice to his friend for 150,000. He issued it for a non-existent service of his company, which is fake billing and tax evasion.'
 - '[...] put up a party at his home, drank 1 or 2 bottles of wine, then went up to [...] to bed, argued with her, slapped her, and would not let her sleep until she had sex with him. [...] let herself, though she did not want to have sex:'
 - [...] he drank alcohol in a restaurant, where he gave beer and brandy to his [...] year-old son, and even his [...] year-old son. Then, in front his children, he

urinated down from the restaurant's terrace. Then, in the apartment, he wanted to have sex with [...] who did not want it, but he penetrated her from the back.'

- '[...] committed forgery, writing an authorization for a water meter transfer in the name of a friend who had not known about it. He forged his signature on the paper, and then handed it in to the waterworks.'
- '[...] invited his skinhead friend to their house, drank much alcohol with him. [...] Then he took his gun, and fired it from his terrace, then gave it to his son to shoot. He owns the firearm though he has no licence, which is forbidden by law.'
- '[...] and his three men kidnapped a man, who owed him millions. They took him to the countryside, and kept him handcuffed in a cellar for 2–3 days.'
- '[...] went with one of his friends to a nightclub, where he drank a lot of alcohol, and 2D flowed to the barmaid girl there, groped her. Then they waited for her to finish, went to his friend's apartment, where they had threesome sex, and he continued to drink. In meanwhile, [...] was waiting for him at home.'
- 'With his lover, they were into this "meaty" business, stuffing sausages and sell it all to their customers.'
- '[...] also knows that the woman is in tax evasion. In addition, [...]’s father was just released from prison, he had been sentenced for human trafficking .'

(597) 7.2.2. Questionings

(598) The Ethics Folders include various interrogations touching personal data. Such is the forms entitled 'HCO Questioning' and 'Urgent HCO Questioning', in which staff are compelled to give a full account of their debts as follows:

- 'Who do you owe money?'
- 'What did you borrow the money for?'
- 'How much do you have to pay back in total?'

(599) Another type of questioning is the 'Questioning Concerning External Influence'. This includes questions such as the following:

- 'Do you know about any member of staff or the public who is in any way associated with hostile groups/individuals (squirrels, sps, media, spy organizations, psychiatrists) or disgruntled or off-line people? Who are they? What do you know exactly?'
- 'Are there any Scientologists who use org-lines for their own personal business? (To sell products—to acquire buyers in the org or the territory—or recruits employees to work in their business)? Whom and what do you know exactly?'
- 'Do you have a part-time job? If so, where? (Provide exact details—how many hours, where, is it a wog/wise company, etc.)'
- 'Do you have any major loans or debts to someone outside the org? Who and how much? Are you in arrears?'

(600) Among the questionings, the 'Johannesburg Confessional List' must also be mentioned. This is a questioning, a list of questions, done with the help of an E-meter in order to establish whether the data subject is reliable or not, his or her conduct meets ethics rules, he or she is apt for service in the Church.

(601) When used, the following statement is to be read out from the form: 'I am not auditing you. We are about to begin an HCO Confessional. We are not moralists. We are able to change people. We are not here to condemn them. While we cannot guarantee

you that matters revealed in this list will be held forever secret, we can promise you faithfully that no part of it nor any answer you make here will be given to the police or the state. No Scientologist will ever bear witness against you in court by reason of answers to this Confessional. This Confessional is exclusively for Scientology purposes.'

(602) The confession list requires the name of the data subject and answers to the following questions sensitive and relevant in terms of data protection:

4. Have you ever stolen anything?
5. Have you ever forged someone else's signature?
6. Have you ever blackmailed anybody?
8. Have you ever smuggled anything?
9. Have you ever been in prison?
12. Have you ever burglarized any place?
13. Have you ever embezzled money?
14. Have you ever assaulted anyone?
16. Have you ever told lies in court?
17. Have you ever had anything to do with pornography?
19. Have you ever been a drug addict?
20. Have you ever peddled dope?
21. Have you had any dealings with stolen goods?
22. Do you have a police record?
23. Have you ever raped anyone?
25. Have you assisted in any abortion?
26. Have you ever committed adultery?
27. Have you ever practiced homosexuality?
28. Have you ever had intercourse with a member of your family?
30. Have you ever practiced sodomy?
31. Have you ever consistently made a practice of sexual perversion?
32. Have you ever slept with a member of a race of another colour?
33. Have you ever committed culpable homicide?
34. Have you ever bombed anything?
35. Have you ever murdered anyone?
36. Have you ever kidnapped anyone?
39. Have you ever threatened anyone with a firearm?
40. Have you been in illegal possession of firearms?
41. Have you ever been paid for giving evidence?
43. Have you ever been a spy for an organization?
44. Have you ever had anything to do with communism or been a communist?
45. Have you ever been a newspaper reporter?
46. Have you ever had intercourse while under the influence of drugs?
47. Have you ever had intercourse while under the influence of alcohol?
48. Have you ever used drugs or alcohol to procure sex?
- 48a. Have you ever used blackmail to procure sex?
49. Have you ever ill-treated children?
50. Have you ever taken money for giving anyone sexual intercourse?
51. Have you ever had any connection with a brothel?
52. Have you ever had anything to do with a child trafficking [original English baby farming]?

- 53. Have you ever been a spy for the police?
- 55. Have you ever done anything you are afraid the police may find out?
- 56. Have you ever falsified the books in any firm you worked for?
- 59. Have you committed any overts against yourself?
- 61. Have you committed any overts against your family?
- 62. How do you feel about sex?
- 63a. Have you committed any overts against others?
- 79. Have you ever been a member of the Communist Party?
- 80. Have you ever been a member of any group with similar ideals as the Communist Party?
- 81. Do you know any communist personally?
- 82. Have you ever injured Dianetics or Scientology?
- 87. Have you ever injured any Scientologists?

(603) 7.2.3 Court Proceedings

- (604) 7.2.3.1 As it appears in several Church forms, statements to be completed by believers, believers essentially forgo taking the disputes between each other and the Church itself to court, disputes can only be resolved by the religious authorities of Scientology: *'I shall try to resolve that dispute solely through the Church's internal Ethics, Justice and Chaplain's Court procedures—including requesting the Supervisory Body for Religious Arbitration [...].'*⁵⁵ The documents of the CSH internal judicial procedures are also kept in the Ethics Folders.
- (605) Various procedures were therefore developed to investigate and penalize ethics and other vices. One such is the so-called Committee of Evidence. This is a panel of impartial persons delegated by the body in charge of convening it. The President of the Committee presides over its meetings, of which voice recordings are made. In the course of the evidentiary process, the evidence enumerated in a list of facts is put in the Ethics Folder. The members of the Committee assess the evidence gathered, and decides, by voting, on the punishment. Internal rules provide for the body convening the Committee to approve or override its decisions, and for the implementation, promulgation and review of decisions.
- (606) The Chaplain's Court is another mode of dispensing justice. The Scientology Tech Dictionary encountered in the course of the proceedings states: *'the purpose of the Chaplain's Court Unit is to resolve matters of dispute between individuals. Staff personnel, PCs, students and Scientologists may utilize this Court Unit to resolve their own disputes or legal affairs.'*
- (607) The Ethics Folders often include decisions by the Court of Ethics. The Scientology Tech Dictionary mentioned above states: *it is 'part of the ethics and justice system of a Scientology organization. A Court of Ethics is convened on the basis of statistics and known evidence of misdemeanours or crimes against the Codes of Ethics of Scientology. It is authorized to direct discipline such as suspension from training or processing for weeks or months, repayment of debts or loans, payment of damages, application for restitution of wrongs and damage, which shall be a fair sum, commensurable with the harm done.'*
- (608) **7.2.3.2** The Authority also found documentation on several very extensive judicial proceedings between the documents seized and taken custody of. These were typically written in English, and the evidence produced in the Hungarian language was also

⁵⁵ Quote from the document *'Religious Services Application Form, Agreement and General Release Declaration'*

translated into English, and their covers had references to transfers of the files: 'FROM: HCO COPE OFF BUDAPEST, VIA: LC BUDAPEST, VIA: CONT JUSTICE CHIEF EU⁵⁶, TO: D / INT JUSTICE CHIEF⁵⁷.'

(609) These folders contain very detailed procedures, much like 'secular' judicial proceedings, and written material containing related documents. Relating to the subject of the case, they include all the related 'Knowledge Reports' and other reports, ethics reports, documents called 'Ethics Summary' listing actions, health data, social security numbers, ambulant treatment sheets (e.g. one related to harassment), outpatient medical records, forensic medical opinions, or, for example, the records of interrogations of a party to a suit on sex life and prostitution, and some filled-in Life History Forms known from Staff Member Folders can also be found in these folders.

(610) 7.3 Findings

(611) **7.3.1** According to the CSH Central Organization statement, an Ethics Folder is begun when the data subject starts an introductory auditing, for which he or she is required to fill in the forms entitled '*Basic Scientology Services Application Form, Agreement and General Release Declaration*' and '*Confidential Religious Folder Agreement*'. The legal basis for data processing in the case of both documents is consent within the meaning Section 5 (1) a) of the Privacy Act. The two types of document were analysed in point IV.6.3.2.2 of this Decision, and the Authority maintains the findings made therein in respect of the Ethics Folders, as well.

(612) **7.3.2** The Authority examined the lawfulness of processing the personal data in the documents containing the personal data of believers and discussed in point IV.7.2.1.

(613) As in point IV.6.3.4, it can be stated here as well that the 'Knowledge Reports' and other reports in the Ethics Folders contain a large amount of often extremely sensitive data. These records made of another believer or of the believer himself or herself by the auditor or the case supervisor or confessions written by the believer and ethics programmes go into the infinite details of the sins—in certain cases, crimes—committed by the believer, the most minute moments of his or her life, work, family and sex life, relationships, or finances.

(614) These accounts and the consequences that can be drawn from them on the data subject qualify as personal data, and, by specifically naming third parties, they result in, as discussed in the previous point, the Church processing the personal and special data of third parties.

(615) The purpose of data processing related to services provided to believers who complete the statements mentioned in point IV.7.1 is following their spiritual development and their use in possible future ethics and judicial actions. In the course of the proceedings, the violation of the principle of necessity as laid down in Section 4 (2) of the Privacy Act emerged in view of the fact that the personal and extremely sensitive data are processed in great detail in writing and that the group of persons who have access to the data is not regulated appropriately.

(616) In order to clarify this matter, especially in its Order no. NAIH/2017/148/17/H, the Authority invited the Data Controllers to present what purpose they use these data and have access to them for. In their letter dated 24 April 2017, the Data Controllers failed

⁵⁶ The officer in charge of internal judicial actions in Europe with offices is Copenhagen, Denmark, belonging to the central governing organization of Scientology in Europe.

⁵⁷ The officer in charge of all internal judicial actions with offices in Los Angeles, USA, belonging to the central governing organization of Scientology International.

to provide full information on the necessity and principles of processing the said data by reference to the fact that, on the one hand, it would be impossible to attach the documents due to their size, and, on the other, they are related exclusively to religious activity, and the Data Controllers are not in a position to hand over to the Authority the internal rules and the directives of Church and the books on all methods.

- (617) On account of the fact that the necessity of processing these data of the believers and the lawfulness of this method of processing could not be fully clarified, the Authority did not set forth any findings on this question.
- (618) **7.3.3** Questionings and other lists
- (619) The introduction to the HCO ethics order called ‘Questioning Concerning External Influence’ reads as follows: *‘The purpose of this questioning is to separate any external influence and harmful situation that may affect the Org, to treat these and to make the Org flourish.’*
- (620) According to the consent to the processing of personal data in the Ethics Folders, the purpose of data processing is following the spiritual progress of the data subject. The questioning, information gathering as per the above order, cannot be regarded as necessary for the spiritual development of the believer, and therefore the Authority holds that the fact that the Church attempts to avoid problematic and delicate issues, to find those that breach the internal rules of the Church by such methods, cannot be reconciled with the purpose of processing personal data within the Ethics Folders.
- (621) The ‘Johannesburg Confessional List’, which is meant to examine the ethical conduct of the believer, asks questions the answers to which contain extremely sensitive data. In the course of the proceedings, the violation of the principle of necessity as laid down in Section 4 (2) of the Privacy Act emerged in this instance as well—due to the reasons mentioned in the case of the ‘Knowledge Reports’—in view of the fact that personal and extremely sensitive data are processed in great detail in writing and that the group of persons who have access to the data is not regulated appropriately.
- (622) On account of the fact that the same answer was provided to the Authority upon its questions seeking to clarify the facts of the case, that the necessity of processing these data of the believers and the lawfulness of this method of processing could not likewise be fully clarified, the Authority did not set forth any findings on this question either.
- (623) **7.3.4** The processing of the personal data of third parties⁵⁸ in the documents included in Ethics Folders
- (624) **7.3.4.1** Pursuant to the definition of the concept in the Privacy Act, any data in the Ethics Folders which applies to a person other than the believer is to be deemed a third party and personal data relating to a third party. This includes, for example, data on the believer’s relatives, friends, acquaintances, and love partners. It occurred in several cases that the Church processed the data of third parties in certain documents—typically auditing and knowledge reports—without authorization to do so by the data subjects.
- (625) **7.3.4.2** According to the principle of fair data processing⁵⁹, the collection and processing of personal data must be fair and lawful. The right to protect personal data is

⁵⁸ Section 3 (22) of the Privacy Act states: “‘third party’ any natural or legal person, or organisation without legal personality other than the data subject, the data controller or the data processor’.

⁵⁹ Section 4 (1) of the Privacy Act.

violated by data processing if the data controller, although his procedure formally complies with the applicable requirements of law, processes personal data in an unfair way.

- (626) The principle of purpose limitation⁶⁰ in data processing is one of the most important, internationally elaborated, principles of data processing, whereby personal data can only be processed for a specific purpose. The purpose must be socially justified, it must be the exercise of rights or compliance with obligations. Each stage of the data processing, e.g. data transfer, must also comply with the purpose of data processing. The purpose of the data processing must be defined in advance and communicated to the data subject who, in the knowledge of the purpose of the data processing, can thus appropriately exercise his or her right to informational self-determination.
- (627) According to the principle of data minimization,⁶¹ the purpose of data processing determines the range of data subjects included in the data collection, and therefore the only types of personal data that may be processed are the ones essential for achieving the purpose of the data processing, and are appropriate to achieving that purpose. Thus, complying with this principle guarantees that the narrowest range of data, only a justified range of data, will be processed for the purpose of the data processing. The principle of data minimization furthermore excludes data processing for the purposes of 'stockpiling', i.e. data must not be collected exclusively for purposes to be defined later.
- (628) **7.3.4.3** By processing the data of third parties, the Church has violated the principle of purpose limitation in data processing under Section 4 (1) of the Privacy Act. In the opinion of the Authority, the CSH Central Organization processes the personal data of third parties without specified purpose and provision of prior information in Ethics Folders.
- (629) If data processing has no lawful purpose, it is to be deemed unlawful in accordance with the aforementioned. At the same time, it cannot be left out of account that the Church not only fails to inform these third parties of the circumstance of data processing, but also processes these data without these persons knowing anything at all about the Church's processing their data.
- (630) By the data processing without the provision of information, the data controller, the Church, acquires a 'dominant informational position', which is extremely damaging to the protection of personal data and the right to privacy of these third parties, they cannot enforce their right to informational self-determination, and, besides, the data processing is qualified as unfair. Due to the absence of prior information, the requirement of explicit and free consent is also not met. Concerning consent, it should also be noted that a data subject's, the believer's, consent cannot bear the interpretation that it applies to another person, that it is made instead of a third person, and thus the believer's consent cannot be construed as the consent of a third party.
- (631) Collecting and recording the data of data subjects who qualify as third parties not being in any legal relation with, not being members of, the Church is also objectionable, because there is no lawful or acceptable purpose that unconditionally necessitates or at least renders acceptable the processing of the personal, often special data. Recording certain persons' data for a purpose they having nothing to do with or because of a legal relationship or a consent that does not apply to them cannot be justified and is wholly unnecessary, moreover it means an unwarranted infringement of their privacy.

⁶⁰ Section 4 (1) of the Privacy Act.

⁶¹ Section 4 (2) of the Privacy Act.

- (632) Respecting the right to privacy of the data subject in no legal relationship with, not being a member of, the Church has priority over the interests of the CSH or the believer sharing the data in the course of a procedure. The CSH may record and process data in relation to providing religious services whereof it has a valid legal basis. These data may not be supplemented by personal data that qualify not as the personal and special data of the believer providing his or her consent to the data processing but as those of a possible non-‘believer’.
- (633) *The SCH may therefore not connect the personal and special data of the believer to the personal and special data the believer gives of persons living in his or her environment, because processing the personal data of persons with no legal relationship with, not members of, the Church of Scientology violates the principles of purpose limitation and necessity.*
- (634) As a consequence of the aforementioned, the Church violated the principles of purpose limitation and necessity in data processing within the meaning of Section 4 (1)–(2) of the Privacy Act by processing the personal and special data of third parties. The Authority has found that the data subjects received no precise information as to what personal data of theirs is being used for which purposes.
- (635) In addition, it is also without appropriate legal basis that the Data Controllers process the personal and special data of third parties because none of the conceptual elements of the legal basis they indicate, consent, is met: third parties receive no prior information; it is not freely, themselves personally, that they give consent to the processing of their personal data, and consequently a further conceptual element, consent being explicit, cannot be effected. Since no other legal basis can be established—such as a law requiring the processing of these data on the basis of public interest—the Church violated Sections 3 (7) and 5 (1)–(2) of the Privacy Act.
- (636) **7.3.5** On account of the fact that the documents which arose from the internal judicial action of the Church and the Authority has seen date from before 1 January 2012, and also in view of the fact that the Data Controllers failed to provide sufficient information for getting acquainted with the details of data processing (e.g. on the special regulations determining the durations of processing these documents), the Authority sets forth no findings on the internal judicial procedures of the Data Controllers.
- (637) The Authority nevertheless calls upon the Data Controllers to take the findings in point IV.7.3.4 into account the court proceedings they have initiated, and desist from processing the personal and special data of natural persons for they have no appropriate legal basis.

(638) 8 The lawfulness of Data Processing for Marketing Purposes

(639) In this part, the Authority examines the lawfulness of data processing in the Central File Folders (hereinafter CF Folders) and electronic Addresso.

(640) The CF Folders, or otherwise mailing files, include primarily the correspondence with believers and clients. They also contain invoices of the books bought and trainings used by clients, reports of completed training courses (‘Success Reports’ and Profit Reports), questionnaires filled in at events organized by the Church (event follow-ups), as well as e-mails, letters by data subjects, and notes made of their telephone calls. The purpose of these letters is to maintain contacts or re-establish contact with those inactive for a time, and call on them, referring to the books bought and courses taken, to continue the way they had started on the ‘Bridge’. In each folder, there is a print-out

version of the 'Bridge', whereby the progress of the believer, the levels he or she has reached, can be followed, as well as the 'Complete Addresso Profile' printed out, which contains, apart from all the contact details of the data subject, all the services used and training courses taken (what, when and where), and his or her donations.

- (641) The Addresso is a kind of membership register, which includes everyone from Church members to clients (who mean, according to their statement, book buyers and training course participants). A wide variety of data is recorded in the software: name, postal code, city, street, house number, telephone number, workplace telephone number, e-mail address, occupation, date of birth, gender. And, as mentioned above, detailed records of services used are made.
- (642) According their statement of 20 January 2017, the data collected by way of the online OCA (Oxford Capacity Analysis) tests and website book selling constitute data processing.
- (643) The same statement stated in answer to the Question by the Authority as to how the data subjects are informed about their data being processed: *'Online book buyers receive, apart from the conditions of buying on the website, a brief data protection notice. In case of occasional book buying personally, buyers received information verbally and in writing, as well, and gave their consent. Provision of data is voluntary, and many never provide their data. The OCA website has a separate data protection notice. [...] Introductory Seminar or Course participants are requested to fill in the Introductory Scientology Courses Application Form, Agreement and General Release Declaration, which has a section on data protection. [...] It is at this point that Student and CF Folders are made for the person, which may include data as described above.'*
- (644) According to their statement, the contact details of data subjects come solely from the persons concerned, lists are not bought, and the database is accessible by authorized staff members.
- (645) In their letter dated 5 July 2017 responding to queries by the Authority, the CSH and CSH Central Organization presented the statements—depending on the given Church activity—used for data processing with marketing purposes. They presented the following:
- a) for book buyers (personal and online);
 - b) for public events (e.g. L. Ron Hubbard's birthday celebration);
 - c) for registrations forms (e.g. training courses).
- (646) In answer to the question by the Authority as to what the purpose of contacting the data subjects is, the answer was: 'information is provided on Church services to those requesting it'.
- (647) The Data Controllers stated that they distinguish between requests for data erasure and for no promotion, for which designations presented under I.14 of this Decision are used.
- (648) According to the opinion of the CSH Central Organization, the folder is an unstructured file fully in accordance with Recital 27 of Data Protection Directive, because it contains or links to no system that allows easy access to personal or special data, and therefore it does not constitute data processing within the meaning of the Privacy Act. The Authority expounded its opinion with regard to this argument in a point above, and upholds that opinion with regard to CF Folders, as well.
- (649) 8.2 Legal Requirements of Data Protection**

- (650) The messages sent by means of information-society services or by electronic communications and the telephone calls of the Data Controllers are classified into three categories on the basis of their contents: electronic advertising, telemarketing and messages not falling into the former two categories and arising from the use of the service or the nature of the data processing.
- (651) The importance of this distinction arises from the fact that different data protection requirements apply to each category.
- (652) **8.2.1** Section 14 (1) of the E-commerce Act distinguishes between two groups of electronic advertisement:
- On the one hand, there are messages containing advertisements, where data controllers communicate advertisements within the meaning of Section 3 d) of the Commercial Advertising Act. Evidently, the requirements under Section 6 of Commercial Advertising Act apply to such messages (as detailed below).
 - On the other hand, '*any communication containing information related to the achievement of a social objective*' is qualified as an electronic advertisement. Section 14 (5) of the E-commerce Act states: 'the provisions under Section 6 of the Commercial Advertising Act shall be appropriately applied to electronic advertisements within the meaning of subsection (1) b).
- (653) Accordingly, the requirements under Section 6 of the Commercial Advertising Act must be applied to data processing when the Data Controller send messages which either contain advertisements or information related to the achievement of a social objective to the data subjects.
- (654) **8.2.2** Pursuant to Section 6 of the Commercial Advertising Act, the legal basis of data processing for marketing purposes is consent by the data subject, the requirements of which are regulated by Section 6 (1)–(2) of the same Act. According to these provisions of the Act, consent must be unambiguous, explicit, made freely, and appropriately informed.
- (655) The unambiguous and explicit nature of the consent is that aspect of consent that the data subject clearly knows on the basis of the circumstances of giving consent that he or she is consenting to data processing for marketing purposes, that there is no doubt about his or her 'consciousness' in giving consent, because this is evident from the information provided to him or her. In addition, explicit consent requires an active conduct by the data subject: data processing will be lawful if the data subject is required to actively do expressing his or her consent to the beginning of the data processing (a good practice of obtaining consent is requesting the data subject to tick a checkbox).
- (656) Appropriate information is not detailed by the Commercial Advertising Act, and therefore it is the general data protection law, the obligation under Section 20 of the Privacy Act, that applies. Pursuant to Section 20 (2) of the Privacy Act, the data subject must be provided prior information on the purpose, legal basis and duration of data processing (the Privacy Act lists several additional conditions and the recommendation of the Authority⁶² spells out further requirements of the provision of prior information).
- (657) The freedom of consent is realized when the data subject has an opportunity of genuine choice prior to the beginning of data processing. If the consequences of consent undermine his or her free choice, the consent does not qualify as made freely. Furthermore, this freedom permeates the entire data processing: consent is free

⁶² <http://naih.hu/files/tajekoztato-ajanlas-v-2015-10-09.pdf>

provided the data subject has information (is provided appropriate information) on what data processing he or she is consenting to and is given the opportunity to decide on this basis (without the opportunity to decide, consent cannot be said to have been given freely).

- (658) According to the permanent practice of the Authority, the requirements of the legal basis of consent are not met if starting different kinds of data processing (e.g. registration and newsletter sending) are made conditional on the data subject consenting to all the kinds of data processing, because, in this case, consenting freely, unambiguously and explicitly can be questioned.
- (659) The Commercial Advertising Act prescribes further obligations for data controllers. It lays down additional requirements concerning erasure, and requires data controllers to keep records of consenting persons.
- (660) From a data protection perspective, however, the provisions of the Commercial Advertising Act do not constitute an all-round and self-sufficient law, because it does not provide for several data protection requirements. Therefore, the provisions of the Privacy Act also apply to data processing for marketing purposes.
- (661) With regard to data processing for marketing purposes, the principle of fairness has a role from among the basic principles. Section 4 (1) of the Privacy Act states: ‘recording and processing of personal data shall be done under the principle of lawfulness and fairness’. The principle of fair data processing points beyond legality (the lawfulness of data processing); it is a principle that permeates the entirety of data processing, the aim of which is to provide highest-level protection to privacy and enforce informational self-determination in the course of various kinds of data processing with individual features (for instance, more complicated, long-drawn kinds of data processing with several purposes, which data subjects may find difficult to comprehend).
- (662) Under Section 15 (1) of the Privacy Act, the data subject may request information, among others, on the source of data. In view of this provision, data controllers must, from the outset, design and carry out their data processing so as to be able to provide information, upon request, on the source from which they had obtained the personal data of the data subject. This ensures that data subjects can control data controllers, call them to account whether they had obtained their consent to data processing. On the basis of this provision—with a view to Section 6 (5) of the Commercial Advertising Act—, data controllers, in the case of data processing for marketing purposes, must keep a register whereby it can be clearly stated when and how data subjects consented to the processing of their personal data.
- (663) **8.2.3** With regard to telephone calls for marketing or contact maintenance purposes—in the case of data processing based on the prior consent of data subjects—there is no particular provision of law. As a result, the provisions of the Privacy Act must be applied for the data processing arising from these activities (processing and use of telephone numbers). Insofar as the Data Controller wishes to use telephone numbers for the purposes mentioned above, it must comply with the provisions of the Privacy Act.
- (664) In the case of processing telephone numbers, being personal data, for the purposes above, its legal basis in accordance with Section 5 (1) of the Privacy Act is therefore the consent of the data subject. Section 3 (7) of the Privacy Act states: “the data subject’s consent” shall mean any freely and explicitly given specific and informed indication of the will of the data subject by which he signifies his agreement to personal data relating

to him being processed fully or to the extent of specific operations'. Accordingly, consent in the case of telephone numbers has for conceptual elements: that it is 'freely given, is 'explicit', 'unambiguous', and being appropriately informed.

(665) Though the definitions of consent in the Commercial Advertising Act and the Privacy Act partly differ, there is no essential difference between the individual conceptual elements according to the permanent practice of the Authority. Explicitness under the Privacy Act and being express under the Commercial Advertising Act, clearness under the Privacy Act and unambiguity under the Commercial Advertising Act and being express under the Privacy Act correspond to each other (the concepts of voluntariness, 'freely', and appropriate information, 'informed', literally correspond in both acts). Accordingly, the exposition of Section 6 (1)–(2) of the Commercial Advertising Act made above apply with regard to the data protection requirements under the Privacy Act.

(666) With regard to the above, the Decision of the Authority terms both the messages sent by means of information-society services or electronic communications and telephone calls for marketing purposes or providing information on social objectives within the meaning of points 1 and 2 above as data processing for marketing purposes.

(667) **8.2.4** Furthermore, there might be messages and phone calls that do not fit into either of the above categories, and are made (or calls initiated) by the data controller to the data subjects for purposes of general information, inquiry, calling attention, or fulfilment of legal obligations. Such is the arranging of appointments brought up as an example at the on-site inspection held on 13 June 2017 and the type of letter (like the one with the subject 'Inquiry from the Budapest Org' sent to a believer on 9 April 2015) with the content 'Haven't seen you for long. How are you?'

(668) There is no specific legal rule for letters with this kind of content, and thus the provisions of the general data protection law, the Privacy Act, apply. In accordance with the permanent practice of the Authority, this kind of contact between the data collector and the data subject is a natural part of on-going data processing, and thus requires no special consent. Accordingly, the Authority refrained from examining the lawfulness of sending such messages hereafter.

(669) **8.2.5** On account of the aforementioned, the Authority examined the data processing for marketing purposes by the Data Controllers in the following three respects:

- first, the Authority examined the legal basis of data processing; that is, whether the Data Controllers use documents (forms, questionnaires) whereby they can obtain the consent of the data subjects within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act (as well as Section 3 (7) of the Privacy Act) or no;
- second, the Authority also examined how the Data Controllers complied with the provision of Section 6 (5) of the Commercial Advertising Act and arising from Section 15 (1) of the Privacy Act obliging them keep records of the sources of consent;
- third, whether the practice concerning data subjects requesting unsubscription is lawful or not.

(670) **8.3 The Examination of the Legal Basis of Data Processing by Analysing Individual Documents**

(671) The Authority examined the paper-based and electronically-accessible documents the Data Controllers designated as ones they use for obtaining consent to data processing for marketing purposes and, beyond these, all available forms and event questionnaires. On the basis of these, the Authority has found information on marketing purposes in the cases presented below.

(672) 8.3.1 The Online Completion of the Oxford Capacity Analysis

(673) The so-called OCA test can be completed both on paper and online. The Data Controllers provide the opportunity for the latter at the websites <http://www.oca.szcientologia.org.hu> and www.tesztkozpont.net.

(674) On the first website, personal data are required to be entered first (name, e-mail address, phone number, age, gender, country, postal code), and, after clicking on the 'Start Test' button, the 'Data Processing Notice and Data Protection Statement' pops up. In this, the Data Controllers inform data subjects that 'the purpose of data processing is also to send e-mail newsletters containing commercial advertisements to users and information on current affairs and products'. At the bottom of the pop-up window there is a single checkbox with the text 'I accept'. By ticking this, one accepts the notice and consents to data processing. Clicking on the 'Continue' button begins the completion of the 200-question test.

(675) On the other website, the first step is to complete the test, after which the following personal data are required: name, e-mail address, phone number, gender, age; and then the test can be sent by clicking on the 'Send Test'. The rules entitled 'Data Processing Notice and Data Protection Statement' can be accessed directly from this surface, which contains largely the same rules as those on the first website.

(676) The Authority examined the documents detailed in points II.18.2 and II.18.3 (189–190) of the Decision, and now sets forth the following findings:

- a) The data controller, the data processor and the recipient of transferred data are not clearly identified because the information on the identity of the data controller does not always cohere, the data controller is sometimes identified with the data processor the reason for which is not given. The recipient of the data transfer is also identified with one of Data Controllers on the website <http://www.oca.szcientologia.org.hu>, from which it is also unclear whether this is a case of joint data processing or actually data transfer. In the latter case, according to the general practice of the Authority, a separate consent must be obtained from the data subject to transfer his or her personal data to a third party. There was no separate request for consent to transfer data to the recipient on the website www.tesztkozpont.net.
- b) Not all marketing forms used in practice are identified as the purpose of data processing, since the Authority found several instances of records—called 'Phone Notes'—proving that data subjects were also contacted by telephone to offer them various services. The Data Controllers designated neither this nor the postal marketing in their notices.
- c) Consent was designated as the legal basis of data processing, but an incorrect reference to law was provided, as neither Section 13 (3) of the E-commerce Act nor Section 6 (5) of the Commercial Advertising Act can be regarded as a legal basis of processing personal data on the basis of consent.
- d) The provision of information on the duration of data processing is misleading, because the first sentence of this section of the notice informs the

data subjects that the answers to the test questions are stored for 60 days after the completion of the test, yet many folders include tests with either the questions or only the answers (yes/no/perhaps), from which the content of the test can easily be restored.

- e) In the case of both sets of rules, it is also a breach of law to refer to the Data Protection Act void since 1 January 2012, and still designate the Data Protection Commissioner and contact details with regard to remedies, and to define the period available for responding to a data subject's request to enforce his or her rights as the void 30 days when it is only 25.

(677) The Authority has found that the Data Controllers could not have obtained consent to data processing for marketing purposes in accordance with Section 6 (1)–(2) of the Commercial Advertising Act and Section 3 (7) of the Privacy Act.

(678) In the opinion of the Authority, though the Data Controller provided information on data processing for marketing purposes in the data processing notice and data protection statement, it failed to take into account that it formulated four purposes of data processing:

- data processing for viewing the website and obstruction of abuse;
- identified completion of the personality test and establishing contact with the data subject;
- data processing for marketing purposes;
- data processing for statistical purposes.

(679) Among these purposes of data processing, data processing for marketing purposes can be regarded as an independent purpose, for which the data controller must obtain a separate consent from the data subject. However, in the pop-up window, there was no checkbox through which data subjects could give their express consent to data processing for marketing purposes, thus the requirement of being 'express' ('explicit') and 'specific' ('unambiguous') was not met. Given that data subjects did not have the opportunity to declare their will with regard to data processing for marketing purposes, consent cannot be said to have been given 'freely' either. Finally, according to the opinion of Authority, the data controller failed to comply with a further conceptual element of consent, the provision of prior information, as explained above.

(680) 8.3.2 Invoices Used by the Data Controllers

(681) In the invoices submitted in Annex 5 of the Church's reply dated 5 July 2017, data subjects were required to give, among others, their names, e-mail addresses and telephone numbers. In addition to these, the Authority found another type of invoice used by the CSH Central Organization, as well.

(682) In this latter invoice type, the following text can be found in a separate section: 'I hereby consent to the recording of my data for sending me further informative publications' and 'I do not consent to the recording of my data for sending me further informative publications'. On each side of both texts, there are a checkbox and a 'Signature' field. On the other type of invoice, there are only the text 'I hereby consent to the recording of my data for sending me further informative publications' and the checkbox with the text 'Signature'.

(683) The Authority has found that this practice complies with the requirement of freely given consent to data processing for marketing purposes as a legal basis, but it does not meet the other conceptual elements of consent. In the cases where there is a technical limit to providing information because of, for example, the size of the form recording

data, the highest level of providing information to data subjects is ensured by the practice of indicating, besides identifying data processing and the data controller, the way—e.g. the Internet—to access the data processing notice in order to provide data subjects with appropriate information on the detailed conditions of data processing. In view of the fact that this was not the case, and that no such information could be reached on the Church's website, the Authority has found that the Data Controllers could not have obtained by way of this form consent to data processing for marketing purposes within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act.

(684) 8.3.3 Questionnaires Used at Public Events

(685) The Authority found several questionnaires in the folders that include data protection statements. In one of these—simply called Questionnaire—the person completing it is required to provide the following data: name, address, telephone number, and e-mail address. The 'Data Protection Statement' on it states: *'I the undersigned consent to the collection, processing and storing of my personal data by the Religious Association of Scientology Central Organization. I am aware of the purpose of data processing: the possibility of sending me informative newspapers, letters or e-mails, as well as maintaining personal contacts with me, whereby I will receive information on publications, services and events.'*

(686) The letter-head of another questionnaire states: *'Let's create a sane world together! Join the team.'* The person completing it is requested to provide the following data: name, address, telephone number, e-mail address, and age. The 'Data Protection Statement' on it states: *'I the undersigned consent to the collection and storing of my personal data provided through this questionnaire by the Church of Scientology. I am aware that the purpose of data disclosure is that the Church send me information material and maintain contacts with me by mail or telephone. I am aware that data disclosure is made freely. This statement of mine shall be valid until withdrawal.'*

(687) The Authority has found that the Data Controller could not have obtained by way of these forms consent to data processing for marketing purpose within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act.

(688) Though the Data Controllers provided sufficient information on data processing for marketing purposes in the data protection notices of the documents mentioned above, they failed to take into account that they formulated two purposes of data processing:

- maintenance of contact with the data subject personally and by mail or telephone, and
- data processing for marketing purposes.

(689) Among these purposes of data processing, data processing for marketing purposes can be regarded as an independent purpose, for which the data controller must obtain a separate consent from the data subject. However, in the examined forms, there was no checkbox through which data subjects could give their express consent to data processing for marketing purposes, thus the requirement of being 'explicit' ('express') and 'clear' ('unambiguous') was not met. Given that data subjects did not have the opportunity to declare their will with regard to data processing for marketing purposes, consent cannot be said to have been given 'freely' either.

(690) As explained in the previous point, in cases when a data collection form does not have the space for a notice to present the data processing, the highest level of providing information to data subjects is ensured by the practice of indicating, besides identifying

data processing and the data controller, the way—e.g. the Internet—to access the data processing notice in order to provide data subjects with appropriate information on the detailed conditions of data processing.

(691) 8.3.4 Data Collection During Book Buying

(692) In the letter of 5 July 2017 written by the Church in response to a question by the Authority, it stated that book buyers provide their personal data when buying books. In the same letter, the Church stated that the forms and statements used when selling books were one way of obtaining consent to data processing for marketing purposes.

(693) The Authority has found that the sale of books is carried out on the official website of the CSH, <https://www.szcientologia.org/store/category/beginning-books.html>. There are two notices available at the bottom of this page, the 'Adatvédelmi megjegyzés' ['Data Protection Notice'] and 'Használati feltételek' ['Terms of Use']. By clicking on these, however, a 'Privacy Notice' and a 'Terms of Use' appear, both documents in English, which according to the general practice of the Authority cannot be considered as appropriate information, as already explained in detail in point IV.5.2.3.1. In the course of buying books, no information regarding data processing is available apart from the aforementioned notices.

(694) In the opinion of the Authority, the data controller could not have obtained consent to data processing for marketing purpose within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act by way of the website <https://www.szcientologia.org.hu/store/category/beginning-books.html>.

(695) Given the fact that the Data Controllers failed to present in detail the process of personal book buying and the provision of information on the circumstances of data processing during it and that the data processing notice used by the Data Controllers does not provide for data processing for marketing purposes, the Authority found it unverifiable that consent to data processing for marketing purposes within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act was obtained during personal book buying.

(696) 8.3.5 Paper-based Completion of the Oxford Capacity Analysis

(697) In the paper-based form of the OCA test, the following data are requested from the data subjects: name, e-mail address, telephone number, occupation, age, and gender. In the OCA forms found in the individual folders, the following Data Protection Statement can be read: *'I the undersigned consent to the Dianetics Centre collecting, processing and storing my personal data disclosed in the OCA test sheet. I acknowledge that my data may be stored until withdrawal, and the staff members of the Dianetics Centre have access to them. I permit the transfer of my data to the following persons: the superior organizations of the Dianetics Centre. I have been informed of the fact that I can access the data recorded about me, and that I can request their correction and erasure.'*

(698) The Authority has found that the Data Controllers could not have obtained consent to data processing for marketing purposes within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act by way of this form. This is so because the form contains no information on the fact that the Data Controllers process the data for marketing purposes.

(699) 8.3.6 The Document Entitled 'LRH Birthday Event Questionnaire 2012'

(700) In its response letter of 5 July 2017, the Church stated about the document entitled 'LRH Birthday Event Questionnaire 2012' and attached to the letter as Annex 5 that it is used for obtaining consent to data processing for marketing purposes.

(701) The document includes the following data protection statement: *'I consent to the processing of my personal data—including special data—disclosed and collected for the purpose of establishing my qualifications. I acknowledge that my data may be stored until I withdraw this statement. Those Church persons have access to them, who are concerned under internal guidelines. I have been informed of the fact that I can access the data recorded about me, and that I can request their correction and erasure. The data concerning my qualifications are kept by the Church as secrets of the confessional.'* After this text, this notice follows: *'I am aware that this data processing is made freely. Mark the appropriate answer with X.* After this, come the fields *'I consent'* and *'I do not consent'*.

(702) The Authority has found that the Data Controllers could not have obtained consent to data processing for marketing purposes within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act by way of this form. The form contains no information on the fact that the Data Controllers process the data for marketing purposes. The form includes no checkbox (or any other equal solution) whereby data controllers could have given their specific consent to data processing for marketing purposes, because, on the basis of the text in the document, the fields *'I consent'* and *'I do not consent'* refer only to data processing for establishing the *'qualifications'* of the data subject. In the course of the proceedings, the Data Controllers failed to provide unambiguous evidence that the data subjects were informed appropriately on data processing, and thus the requirements of providing appropriate information were not met either. On the basis of the aforementioned, the Authority has found that consent, likewise, could not have been given freely, because the data subjects were not informed of the data processing, and they could not indicate their will about data processing, and thus they could not make a *'free decision'* on data processing.

(703) 8.3.7 Training Course Forms

(704) In its response letter of 5 July 2017, the Church stated that *'registration forms'* are used as documents for obtaining consent to data processing for marketing purposes, and referred to the statements related to taking training courses as examples.

(705) According to the Church statement of 5 July 2017, the forms presented in points IV.6.2.1.2 and IV.6.2.1.3 of the Decision and the document called *'Introductory Scientology Courses Application Form, Agreement and General Release Declaration'* are requested to be filled in for participation in training courses. The Authority has found that the Data Controllers cannot have obtained consent to data processing for marketing purposes within the meaning of Section 6 (1)–(2) of the Commercial Advertising Act or Section 3 (7) of the Privacy Act by way of these documents. This is so because the documents contain no information on the fact that the Data Controllers process the data for marketing purposes. The documents moreover include no checkbox (or any other equal solution) whereby data controllers could have given their specific consent to data processing for marketing purposes. Furthermore, the Authority analysed these documents in detail when examining PC Folders, and found that they do not provide appropriate information to the data subjects. On the basis of the aforementioned, the Authority has found that consent, likewise, could not have been given freely, because the data subjects were not informed of the data processing, and they could not indicate their will about data processing, and thus they could not have made a *'free decision'* on data processing.

- (706) **8.3.8** On the basis of the above, the Authority concluded that the consent collected for marketing purposes in the online OCA questionnaires, the questionnaires presented in point IV.8.3.3, online book selling, paper-based Oxford Capacity Analysis, and Church event questionnaires (e.g. 'LRH Birthday Event Questionnaire 2012') cannot be considered as given, because the Data Controllers failed to obtain a separate consent to data processing for marketing purposes; moreover, the information provided on the circumstances of data processing did not meet the requirements laid down by Section 20 (2) of the Privacy Act in several respects, thus in the online OCA questionnaires, the questionnaires presented in point IV.8.3.3, online book selling, paper-based Oxford Capacity Analysis, and in Church event questionnaires (e.g. 'LRH Birthday Event Questionnaire 2012'), because not only did the Data Controllers fail to provide information to the data subjects by way of the surfaces used for collecting personal data, but no appropriate information is made available on data processing on the official website either; nor did the Data Controllers clearly indicate the forms of data processing for marketing purposes (for example, nowhere was contacting by telephone ever mentioned).
- (707) The Authority, therefore, regards it necessary to obtain consent to data processing for marketing purposes again in the cases where it was collected in the way presented above.
- (708) **8.4** As mentioned above, the Authority also examined how the Data Controllers complied with the provision of Section 6 (5) of the Commercial Advertising Act⁶³ and arising from Section 15 (1) of the Privacy Act⁶⁴ obliging them to keep records of the sources of consent.
- (709) Pursuant to Section 6 (5) of the Commercial Advertising Act, the Data Controllers are obliged to keep records of personal data of the data subjects consenting to data processing for marketing purposes. Under Section 15 (1) of the Privacy Act, the data subject may request information on his or her personal data being processed from the data controller, including the source of the data. In accordance with the above, the Data Controllers must keep records whereby it can be clearly established when and how data subjects consented to the processing of their personal data.
- (710) As stated in point IV.5.2.3 of the Decision, the Privacy Act only provides for consent in writing in the case of special data, but does not do so in the case of non-sensitive data, in which case consent can be given in any form. Nevertheless, in the case of contentious data processing—e.g. data processing in spite of a lack of a statement of consent—the data controller is required to prove the lawfulness of the data processing

⁶³ Section 6 (5) of the Commercial Advertising Act stipulates: 'Advertisers, advertising service providers and publishers of advertisements shall maintain records on the personal data of persons who provided the statement of consent referred to in Subsection (1) to the extent specified in the statement. The data contained in the aforesaid records—relating to the person to whom the advertisement is addressed—may be processed only for the purpose defined in the statement of consent, until withdrawn, and may be disclosed to third parties subject to the express prior consent of the data subject.'

⁶⁴ Section 15 (1) of the Privacy Act states: 'Upon the data subject's request the data controller shall provide information concerning the data relating to him, including those processed by a data processor on its behalf or according to his/her notice⁷, the sources from where they were obtained, the purpose, grounds and duration of processing, the name and address of the data processor and on its activities relating to data processing, and—if the personal data of the data subject is made available to others—the legal basis and the recipients.'

in the event of proceedings against it because, according to the formulation of Section 6 (8) of Privacy Act, if there is any doubt, it is to be presumed that the data subject failed to provide his consent. Therefore, it is recommended—from the data controller’s point view—that the statement of consent be made in writing.

(711) On account of the fact that the sources of the data subjects’ consent cannot be established from electronic records kept by the Data Controllers, it can be concluded that the Data Controllers failed to comply with the requirements under Section 6 (5) of the Commercial Advertising Act and Section 15 (1) of the Privacy Act.

(712) **8.5** The Authority also examined whether the practice concerning data subjects requesting unsubscription is lawful or not.

(713) The Data Controllers stated that they distinguish between requests for data erasure and for no promotion. Though they did not precisely give the reasons for this, but in all probability it is due to the difference between processing data for maintaining contacts and for marketing purposes. Accordingly, the data of data subjects requesting some kind of unsubscription are marked differently in the Addresso database (e.g. ‘asked off’ or ‘no local mail’, etc.).

(714) In the opinion of the Authority, if data is processed for several purposes (e.g. a telephone number or e-mail address is processed for maintaining contacts with clients, telephone calls or e-mails are for direct marketing purposes), and the data controller is requested not to send messages for marketing purposes, it is a lawful solution for the data controller to continue to process the data of the data subject but mark them so as not be used for the purpose the data subject prohibited.

(715) On account of the aforementioned, the Authority sets forth no findings in this regard.

(716) 9 The Use of Person and Property Protection Cameras

(717) A person and property protection camera system is in operation at the Budapest Váci út headquarters of the CSH Central Organization. In this point, the Authority reviews the compliance of this data processing with law.

(718) The informatics expert described the operation of the system in his opinion presented in point I.6 of the Decision and at the on-site inspection held on 22 December 2016, and also showed the field of view of the cameras by way of photos recorded on the DVD attached to the minutes of the inspection and the DVD attached to his expert opinion.

(719) **9.1** The conditions of electronic surveillance are principally laid down by Sections 30 and 31 of the Act CXXXIII of 2005 on Persons and Property Protection and on the Activity of Private Detectives (hereinafter the Property Protection Act).

(720) In accordance with this, the person in charge of property protection may make and process image and voice recordings or image-and-voice recordings by the means of an electronic surveillance system in keeping with the provisions of the Property Protection Act and the Privacy Act.

(721) Cameras may be placed solely on private property or on parts of private property visible to the public subject to the explicit consent of the natural person concerned. Consent may be indicative conduct. Indicative conduct consists in the natural person entering the part of the private property open to the public in spite of the notice placed there.

(722) The Property Protection Act provides for the use of an electronic surveillance system in the following four cases:

- a) the protection of human life and safety, and personal freedom,
- b) safekeeping of dangerous materials,
- c) protection of business, payment, bank and bond papers,
- d) property protection.

(723) In addition, area surveillance systems may be used when circumstances during the fulfilment of its assignment render it probable that no other method of perceiving infringements of law, surprising the perpetrator in the act, and prevention and provision of evidence of infringements of law would be effective; furthermore, the use of technical equipment is indispensably necessary, and does not limit the right to informational self-determination disproportionately.

(724) According to the Property Protection Act, image and voice recordings or image-and-voice recordings must be destroyed or deleted by default, when not used, within three days of recording. Section 31 (3) and (4) provide for one single special circumstance when the storage period can be prolonged for thirty or sixty days.

(725) One of the most important conditions of operating a camera surveillance system is the requirement of the provision of appropriate information. In the case of protecting private property open to the public, clearly eligible notifications, descriptions, must be placed in clearly visible places to call attention to fact that surveillance cameras are in operation and to the purpose of surveillance by the electronic property protection system, the making and storing of image and voice recordings containing personal data, the legal basis of data processing, the place of storing the recordings, the duration of their storage, the identity of the system user (operator), the group of persons having access to the data, and the provisions of the Privacy Act on the rights of data subjects and the order of enforcing them.

(726) If the operation of the area surveillance camera complies with provisions of the Property Protection Act, property protection tasks may be fulfilled by a person defined by Section 1 (3) of Property Protection Act. Accordingly, the activities of persons and property protection may be carried out by person qualified in one of the following skills:

- a) security guard,
- b) body guard,
- c) property guard.

(727) With regard to the field of view of cameras, it is important to note that electronic surveillance systems can be used for monitoring only the parts of buildings, rooms and areas owned (or used) and the occurrences taking place there.

(728) The camera system may not be directed to public areas, because the monitoring of public areas in Hungary is strictly limited and based on explicit authorization by law (thus public areas may be monitored by the police, public-safety officials and armed security guards).

(729) On the basis of the provision of information in the Rules by Data Controller II, the opinion of the informatics expert, and the statements by Data Controller II, the Authority holds that the data processing is unlawful for several reasons:

(730) 9.2 Findings

(731) **9.2.1** The Authority has first of all found that the identity of the controller of the personal data processed during the use of the electronic monitoring system was not clear. The statements of the Church designated the CSH Central Organization as the operator of the camera system, yet neither the statements nor the Rules clearly state the identity and contact details of the data controller.

- (732) **9.2.2.** The Authority has further found that, although the purpose of persons and property protection from among the purposes justifying the use of the electronic monitoring system is mentioned, the Rules, in the opinion of the Authority, lack the justification of its use, and why no other method of perceiving infringements of law, surprising the perpetrator in the act, and prevention and provision of evidence of infringements of law would not be effective; and that, furthermore, the use of these technical tools is indispensable and does not imply a disproportionate restriction on the right to information self-determination. Furthermore, the use of technical equipment is indispensably necessary, and does not limit the right to informational self-determination disproportionately.
- (733) **9.2.3** After the examination the Rules and Church statements, it can be stated that the legal basis of data processing was likewise not designated appropriately. As mentioned above, the legal basis for data processing is the explicit consent of the natural person under the Property Protection Act. Consent may be indicative conduct with regard to this kind of data processing, but the assessment of interests is not an appropriate legal basis for data processing under the Property Protection Act.
- (734) **9.2.4** According to the Property Protection Act, image and voice recordings or image-and-voice recordings must be destroyed or deleted by default, when not used, within three days of recording. The Rules have no information on this issue; according to the statement by Data Controller II, recordings are automatically erased within 30 days, while, as per the statement dated 11 July 2017, they are erased within 3 days. On account of the fact that the informatics expert was able to save the images that had been recorded during the on-site inspection on 7 December 2016 during the on-site inspection on 22 December 2016 proves that Data Controller II failed to comply with requirements of law in this regard, as well.
- (735) **9.2.5** In the application of consent as a legal basis, the appropriate information of data subjects is also to be examined, just as in the previous cases of data processing.
- (736) As mentioned above, Data Controller II failed to provide appropriate information on the identity of the data controller, the legal basis and duration of data processing, and was imprecise in designating the purpose of data processing. Furthermore, it can also be stated that data subjects are not provided appropriate information in the Rules concerning the rights of and remedies available to the data subject. The data controller must also ensure that recordings can be viewed again only by persons having decision-making rights within the organization on the basis of viewing the recordings or have persons and property protection qualifications as required by the Property Protection Act. In this regard, the rules of for what purpose and when these persons may view again recordings stored have to be laid down. In the opinion of the Authority, no such regulation was made for the data processing examined, and neither were data subjects informed thereof.
- (737) **9.2.6** On the basis of examining the field of view of the cameras, the Authority has found that Data Controller II operates cameras with a field of view directed to public areas, and thereby violates the provisions of applicable and referenced departmental law and the principles of purpose limitation and necessity under Section 4 (1) of the Privacy Act. The intent of the legislator in bring the applicable departmental laws was that, when public areas require surveillance, organs authorized by law would be entitled to do so in keeping with the requirements laid down by law and no other legal entity. Therefore, unlawful data processing holds for the following cameras:

- cameras named 'UTCA I' [street], 'UTCA II', 'UTCA III', and
- camera named 'Kapu' [gate].

- (738) In the opinion of the Authority, two further cameras violate the principles of purpose limitation and lawfulness: the cameras named 'Fsz. Porta' [reception desk, ground floor] and '1. em. folyosó' [corridor, storey 1]. In their case, the Authority does not see the data processing purpose of persons and property protection as justified, their being indispensably necessary, and that they do not limit the right to informational self-determination disproportionately. In the case of the reception desk camera, it would suffice to monitor the area in front of the reception desk. In the case of the camera on the corridor of storey 1, the Authority holds that no purpose can be identified that would necessitate recording occurrences taking place in the monitored room and the environment of the workstation there.
- (739) **9.2.7** An important question in using a camera system is who operates it. In accordance with the referenced rule of the Property Protection Act, an electronic surveillance system can only be operated by appropriately qualified personnel. Since Data Controller II does not indicate that any other personnel operate the system in either the Rules or in its statements, and makes no mention thereof, personnel with the required qualifications must be from within the organization. On account of the fact that the Authority did not examine in the course of the proceedings whether there indeed are appropriately qualified personnel within the organization, it sets forth no findings on this issue, yet it calls the attention of the Data Controller to this condition of lawful data processing.
- (740) **9.2.8** On the basis of the aforementioned, it was found that Data Controller II, by its operation the electronic surveillance system, violated Sections 4 (1)–(2), 3 (7) and 20 (2) of the Privacy Act, as well as Sections 30 (1)–(2) and 31 (1)–(2) of the Property Protection Act.
- (741) **10 Data transfers**
- (742) Examining the folders, the Authority encountered telex messages several times, which the Church uses as a kind of internal channel of communication between the organizations of Church of Scientology International. In many cases, these telex messages include the personal and special data of believers, and thus the Authority found it necessary to examine this mode of communication.
- (743) It was in 2003 that the outdated classical telex service centre wound up in Hungary, bringing along the fast disintegration of telex networks. The variegated information technology developments of the 1990s had previously made it possible for IBM compatible computers, with the help of software developed for them and the interfaces connecting to telex lines, to exchange telex messages without telex machines.
- (744) Among the documents examined, there were telex-like messages that might have come from the pre-2003 telex network, and that might have been made and transferred via the hybrid solutions resulting from technological developments.
- (745) Telex format messages—mostly in Staff Member Folders—are dated between 2001 and 2016, and were written in English. This and the designation of the addressees allow for concluding that these were not sent for use in Hungary. On the basis of the messages found, it is visible therefore that this form of communication did not cease to exist within the Church organization after 2003, with help of an appropriate desktop computer, tailored software, circuit-switched telephone lines, a modem capable of data

- calls, telex-format messages can be written and transferred to this day, in which classical letter-heads and telex addresses are given in the traditional way.
- (746) This channel of data transfer, though based on an outdated technology, is suitable for avoiding the Internet network with regard to user access, and, obviously, no electronic mail service is needed.
- (747) The following entries render the computer preparation and transfer of messages probable:
- a) 'Received from telex system at 06-Feb-2016 10:06', which refers to the application of the telex system or its successor system;
 - b) 'I SENT IT IN EARLIER SECURE FILE', which refers to sending computer message with some sort of protection;
 - c) The following can be found among the addressees—EU and INT extensions meaning organizational units: CJC EU, PUBLIC MAA AOSHEU, SNR HAS INT, T/SNR PCO INT, T/CLEARANCE I/C OSA INT, Finance DIR EU, OFF CLO EU, PRESIDENT WISE EU, etc.
 - d) 'The following files are attached to this telex: *[...] – BUDAF – Life History 20160822.zip', meaning the attachment of a Life History Form questionnaire as a compressed file.
- (748) Some of the messages were transferred to further organizations (persons) apart from the addressees.
- (749) On account of the fact that, in the course of the proceedings, the Authority did not examine data controller capacity of these organs, including the Church of Scientology International and the Continental Liaison Office in Copenhagen, the Authority sets forth no findings on the transfer of personal and special data to other countries.
- (750) Nevertheless, the Authority wishes to point out that, if the data controller or data processor under the scope of the Privacy Act wishes to transfer data to a data processor processing data in a third country or transfers data to a data processor processing data in a third country, it must comply with provisions laid down in Section 8 of the Privacy Act.
- (751) **11** The Authority examined the document submitted by the Data Controllers and entitled 'The Data Protection Rules for the Church of Scientology in Budapest', which the Church regards as and calls its effective data processing notice since 2012.
- (752) The Authority found that, on the basis of its wording, this document cannot be regarded as the general data processing notice of the Church, because its formulations clearly point to the fact that it is an internal regulation, which calls the attention of staff members to data processing requirements, the Authority, therefore, did not consider it as providing information on data processing in the cases of data processing discussed above.
- (753) Nevertheless, the regulation cannot be said to provide appropriate information and guidance on the data protection requirements laid down by the Privacy Act, because it presents data processing principles and data subject rights by reference to Act XX of 1949 (the Constitution) and Act LXIII of 1992 on Data Protection.
- (754) **12** In point 6 of the operative part of the Decision, the Authority rejected the request for the anonymisation of 'Donor Forms', which were seized and taken custody of from the VAL DOC folders, in view of the fact that, under Section 71 (1) of the Privacy Act, it is entitled get to know and process the documents mentioned, and that the request for the closed processing of the personal data contained in them came not from

the data subjects themselves. Also, I hereby inform you that the Authority is not entitled to modify or change the documents it seized.

(755) 13 In addition, the Authority informs the Church that, upon its request, it kept the files of deceased believers separately, and did not consider them when writing the Decision. The Authority will issue its order on the future of the said files in a separate decision on the termination of the seizure.

(756) 14 Furthermore, the Authority notes that, during the on-site inspection at the headquarters of the Church held on 13 June 2017 and the personal hearing held on 30 June 2017, it experienced, in the course of examining the folders taken custody of from among those seized, that there were entries made and documents inserted in them; the Data Controllers thus failed to comply with the provisions of the order with case no. NAIH/2016/6544/5/H, wherein, under Section 50/B (1) of Proceedings Act, the Authority prohibited the owner to use the things left in its custody.

(757) V The Penalty and its Reasons

(758) 1 In view of the aforementioned the Authority made its resolution as set out in the operative part of the Decision, and obligated the Data Controllers to pay a data protection penalty, and called on them to change their data processing practice to comply with the provisions of the Privacy Act.

(759) 2 Pursuant to Section 61 (1) of the Privacy Act, the Authority is entitled to impose penalties in the event of finding unlawful data processing, the amount of the financial penalty being between one hundred thousand and ten million forints as per Section 61 (3) of the Privacy Act.

(760) Acting upon its discretionary powers based on law, it determined the penalty amount under Section 61 (4) of the Privacy Act.

(761) In determining the penalty amount, the Authority took into account all circumstances of the case, such as, in particular, the number of data subjects affected by the infringement, the gravity of the infringement and whether it is a repeated offense.

(762) 2.1 The number of data subjects affected by the infringement can be regarded as numerous; the Authority presents them according to the structure of the reasons for the Decision as follows:

a) In the case of the Staff Member Folders, there are basically two groups of data subjects: one being those who completed the 'Life History Form' and the other being those persons who serve as staff members of CSH Central Organization and have filled in the given statements for their employment.

The number of data subjects affected by the latter infringement was determined by way of internal legal assistance from the National Taxation and Customs Administration. According this, 387 persons were employed by the Church between 1 January 2012 and 30 January 2017, out of which 265 persons were still in active employment at the time of sending the legal assistance. This means that the number of data subjects affected by the infringement of law detailed in point IV.5.3 of the Decision was 387.

The Data Controllers could not give the number of persons who completed the 'Life History Form'. In view of the fact that the Authority did not take custody of all the Staff Member Folders it seized, it could not establish the precise number of persons who had filled in the 'Life History Form'. On the basis of the folders the Authority took custody of, however, the number of data subjects could be estimated. Out of the 20 folders in custody of the Authority, 9 had the questionnaires in them, which

means a rate of 40%. Thus, taking the number of employees in the examined period as a basis, the number of data subjects affected by the infringement of law detailed in points IV.5.2.1–IV.5.2.3 was about 150.

The Authority found that law was infringed in respect of processing the data of third parties, however, it could not be established in the course of the proceedings how many times the processing of the data of third persons without appropriate legal basis occurred, although it was observed to be a general phenomenon.

- b)** With regard to the PC Folders, the Authority found three areas of law infringement, namely: detoxification, auditing and provision of information.

As the Church failed to give the number of data subjects in this respect, as well, the Authority used the Addresso system as a basis, for it records the services, book purchases and donations of the data subjects. To determine the number of data subjects, the Authority requested the assistance of the assigned forensic informatics expert. On the basis of the information gathered in the course of the proceedings, the Authority provided the informatics expert filtering criteria whereby the number natural persons affected by the law infringements related to detoxification and auditing could be established. The expert found that 2,208 persons participated at least once in detoxification arranged by the CSH Central Organization, and 2,261 persons participated at least once in auditing sessions.

On this basis, it can be stated that the number of data subjects affected by the infringement of law detailed in point IV.6.3.1 was 2,208, and the number those data subjects affected by the infringement of law detailed in point IV.6.3.2 was 2,261.

The number data subjects whose right to appropriate information was violated as detailed in point IV.6.3.5 was at least the same as the number of participants in auditing—as PC Folders were always made in such a case—, that is 2,261.

The Authority found that law was infringed in respect of processing the data of third parties, however, it could not be established in the course of the proceedings how many times the processing of the data of third persons without appropriate legal basis occurred in PC Folders, although it was observed to be a general phenomenon.

- c)** With regard to Ethics Folders, law infringement occurred in respect of the legal basis of data processing. As the Church likewise failed to give the number of data subjects in this area, as well, the Authority had no other recourse but the data available.

As Ethics Folders are started for believers after filling in the same documents as in the case of those starting auditing, the number those data subjects affected by the infringement of law detailed in point IV.7.3.1 was 2,261, being identical with those participating in auditing.

The Authority found that law was infringed in respect of processing the data of third parties, however, it could not be established in the course of the proceedings how many times the processing of the data of third persons without appropriate legal basis occurred in Ethics Folders, although it was observed to be a general phenomenon.

- d)** The Decision found two infringements of law in respect of CF Folders and the Addresso database. The first was the lack of legal basis for data processing for marketing purposes, and the second was the breach of the obligation to record consents.

The number of data subjects affected by the law infringement delineated in point IV.8.2 cannot be determined, the reason for which can be traced back to the breach of law detailed in point IV.8.3.

According to the opinion of the forensic informatics expert dated 22 March 2017, the number of all natural persons registered in the Addresso system was 76,363. In view of the fact that, as set forth in point IV.8.4, it cannot be established from the Addresso database when and how the data subjects consented to the processing of their personal data, the number of data subjects affected by the law infringement delineated in this point of the Decision is 76,363.

Apart from the fact that the sources of the personal data processed by the Addresso database cannot be reconstructed, it likewise cannot be established from it which natural persons were affected by the law infringement discussed in point IV.8.3; however, in view of the fact that the Data Controllers designated such forms as the sources of consent to data processing for marketing purposes that could be found in all the folders the Authority took custody of, the number of data subjects can be several tens of thousands.

- e) The number of data subjects affected by the camera system for the purpose of property protection cannot be determined, but the affected include those working, shopping or entering for other purposes, and, in the case of camera recordings of the public areas, all passers-by.

(763) **2.2** The infringement of law is particularly grave, and, in this respect, the Authority assessed the fact that the Data Controllers processed an extremely large amount of personal and special data of data subjects and third parties without appropriate legal basis, often also breaching the principles of purpose limitation and fair data processing, as well as realizing also stockpiling-type of data processing. The Authority assessed it as grave infringement of law that the data processing of the Data Controllers breached several provisions of the Privacy Act.

(764) The gravity of the infringement of the law was further exacerbated by the fact that the Data Controllers realized stockpiling-type of processing of special criminal data.

(765) **2.3** The unlawful practice of the Data Controllers is continuous (the Church of Scientology in Hungary was established in 1991, but the Authority examined only the period between 1 January 2012 and the end of the proceedings). In spite of the statement of the Data Controllers during the proceedings, no data appeared to point to law infringements taking place only in singular cases, as a result of administrative misunderstanding, an administrator's mistake, the Authority could not take this into consideration as a mitigating circumstance. The Authority did not find an instance of repeated law infringement.

(766) **2.4** Beyond these, the Authority considered other circumstances of the case:

(767) In determining the amount of the penalty, the Authority took into account the fact that the Data Controllers—apart from the case of the property protection camera system—qualify as joint data controllers, and are therefore both accountable for the lawfulness of the entire data processing, the data processing of the Data Controllers is closely related to each other, they share headquarters, and cooperate for the same purpose.

(768) The Authority took into account the fact that the data processing related to the property protection camera system can be linked only to Data Controller II, but, in view of the gravity of the other law infringements, this did not appear as factor decreasing

the penalty amount and providing grounds for differentiating the penalty amount between the Data Controllers.

(769) The Authority assessed the unverifiability of the implementation of the closure under order no. NAIH/2016/6544/5/H as a minor factor increasing the penalty amount.

(770) In determining the penalty amount, the Authority took into account the fact that the economic weight of the Data Controllers is significant. According to the list of civil society organizations the National Office for the Judiciary keeps, the total revenue of Data Controller I, as per its 2015 financial statement, was HUF 2 157 000, while its profit for that year was HUF 190 000, and its 2016 total revenue, as per its financial statement, was HUF 1 570 000, while its profit was HUF 2 390 000 in that year. The total revenue of Data Controller II, as per its financial statement, was HUF 1 679 165 000, while its profit for the same year was HUF 1 036 106 000, and its 2016 total revenue, as per its financial statement, was HUF 484 627 000, while its profit was HUF 426 285 000 in that year.

(771) Never in its practice has the Authority encountered law infringement of this gravity; it cannot forbear from imposing the lawfully highest possible penalty amount in the interest of general prevention of unlawful activity.

(772) VI. Procedural Rules

(773) This Decision is based on Sections 71 (1) and 72 (1) of the Proceedings Act.

(774) It comes into force on the day of its promulgation under Section 73/A (3) of the Proceedings Act. No appeal may be lodged against it in accordance with Section 100 (1) of the Proceedings Act. It is subject to judicial review under Section 100 (2) of the Proceedings Act; I determine the jurisdiction of the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest-Capital Administrative and Labour Court) pursuant to Section 326 (7) of Act III of 1952 on the Code of Civil Procedure (hereinafter Code of Civil Procedure). The time and place of filing the complaint is defined by Section 330 (2) and (3) of the Code of Civil Procedure.

(775) Voluntary compliance with payment obligations failing, the available funds of the Data Controllers deposited with a payment service provider shall be subject to administrative enforcement in accordance with Section 129 of the Proceedings Act.

(776) Information on default penalty is based on Section 132 (2) of the Proceedings Act and on Section 165 (2) of Act XCII of 2003 on the Rules of Taxation. Under Section 42 (3) of Act CXCV of 2011 on Public Finances, penalties effectively imposed and unpaid, as well as the default penalty effectively imposed on unpaid penalties shall be qualified as public dues and collected as taxes.

(777) The penalty shall be paid to the appropriate account by the payment modes listed in Section 25 a) aa) (credit transfer), b) bb) cash placed on a payment account, c) ca) (money remittance) of Decree No. 18/2009 (VIII. 6.) MNB of the Governor of the National Bank of Hungary on Payment Services Activities. Fulfilment of the obligation shall be governed by Chapter VI of the Decree of National Bank of Hungary, save that the payment of the fine cannot be made at the offices of the Authority.

(778) Under Section 74 of the Proceedings Act, the Data Controllers may request from the Authority, before the due date, the postponement of payment or payment in instalments (hereinafter eased terms) if the lack of performance within the time limit is due to reasons beyond their control, or that it would impose an unreasonably heavy burden upon them.

(779) After the expiry of the deadline, the client may lodge, in conjunction with an application for excuse, an application for eased terms, provided that enforcement

procedure has not yet been opened. If the Authority refuses the applications for excuse and for eased terms, a decision shall be issued simultaneously for the opening of the enforcement procedure.

- (780) Should the Data Controllers wish to apply for payment in instalments, duty shall be paid pursuant to Section 28 (1) of Act XCIII of 1990 on Duties, because proceedings for eased terms do not fall in the group of proceedings exempt from duty due to enforcement of certain constitutional rights in the meaning of Section 33 (2) of the Duties Act. Under Section 29 (1) of the Duties Act, the duty on proceedings on request shall be HUF 3 000, payable simultaneously with submitting the request.
- (781) Under Section 153 (2) 9) of the Proceedings Act, procedural costs shall include the expert fee, including reimbursement of the expert's costs. Section 155 (2) of the Proceedings Act states: 'In proceedings opened or pursued *ex officio* the other procedural costs shall be advanced by the authority, excluding the costs specified in Points 3, 6, 10 and 11 of Section 153 incurred by the client.' Section 157 (4) of the Proceedings Act states: 'If the authority confers any obligation upon the client, the client shall be ordered to cover the costs incurred in connection with evidencing the infringement underlying the obligation in question, unless otherwise provided for by the relevant legislation.' Section 158 (1) of the Proceedings Act states: 'The authority shall specify the amounts of procedural costs and shall decide as to the bearing of these costs, including the refund of advanced costs.'
- (782) Information on the measure of duties and the right to suspend the payment of duties is based Sections 43 (3) and 62 (1) h) of the Duties Act.
- (783) Section 127 (2) of the Proceedings Act states: 'The authority of the first instance shall launch the enforcement procedure if it finds that the obligation prescribed in the enforceable decision was not fully discharged by the deadline for performance or if performed in non-conformity with the prescribed requirements.'
- (784) Pursuant to Section 134 d) of the Proceedings Act, if enforcement is for the performance of a specific act or a specific conduct, in the event of non-compliance, the body carrying out the enforcement procedure may impose an administrative penalty upon the obligor if held liable for non-compliance, irrespective of his financial situation and income.
- (785) The duties, competence, and jurisdiction of the Authority is regulated by the Privacy Act.

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