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Ref. UOOU-00051 / 18-14

OFFICE FOR PERSONAL DATA PROTECTION

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DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29

and Section 32 of Act No. 101/2000 Coll., on the Protection of Personal Data and on the Amendment of Certain Acts,

and pursuant to Section 10 and Section 152, Paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code,

decided on 14 June

2018 according to § 152 par. 6 let. b) of Act No. 500/2004 Coll. thus:

, against

Disintegration of the accused

decision of the Office no. UOOU-00051 / 18-8 of April 9, 2018, is rejected and challenged

the decision is confirmed.

, permanent residence

Justification

Administrative proceedings for suspicion of committing an offense pursuant to § 44 para. e) of the Act

No. 101/2000 Coll. in connection with the processing of personal data of the inhabitants of the apartment building

in

in Brno through a camera system was launched

by order of the Office for Personal Data Protection (hereinafter "the Office"), which was

, (hereinafter referred to as the "accused"),

, permanent residence

delivered on February 8, 2018.

The basis for initiating the proceedings was the inspection protocol ref. UOOU-06345 / 17-22 of

November 21, 2017, acquired pursuant to Act No. 101/2000 Coll. and Act No. 255/2012 Coll.,

on Inspection (Inspection Rules), by the Inspector of the Office for Personal Data Protection (hereinafter referred to as the

"Office")

PaedDr. Jana Rybínová and the file material collected during the inspection

at the accused from 28 July 2017 to 15 November 2017.

The inspecting inspector stated in the inspection report within the inspection findings

violation of the provisions of Section 5, Paragraph 2 of Act No. 101/2000 Coll., and failure to comply with the information

obligations imposed on personal data controllers in § 11 paragraph 1 of Act No. 101/2000 Coll. and violations

provisions of Section 16, Paragraph 1 of Act No. 101/2000 Coll., as the accused did not comply with the notification

obligation at the Office and processing of personal data through a camera system

so it was not registered. The accused did not object to the inspection report.

Subsequently, on 6 February 2018, the administrative body of the first instance issued an order, delivered

accused on 8 February 2018, by which the accused was found guilty of a misdemeanor

in the form of negligence according to § 44 par. 2 let. e) of Act No. 101/2000 Coll. in connection with

processing of personal data of the inhabitants of the apartment building by means of a camera

system, by the fact that as a controller of personal data in the sense of § 4 letter j) of Act No. 101/2000 Coll.

in the period from 1 June 2000 (ie from the entry into force of Act No. 101/2000 Coll.) at least until

On October 12, 2017, he processed personal data without the consent of the data subject, except in the cases specified

in the law and thus violated the provisions of § 5 paragraph 2 of Act No. 101/2000 Coll.

On 16 February 2018, the defendant received opposition from the above-mentioned order.

The accused stated that he did not commit the violation stated in the order because he did not violate the obligation

laid down in Section 5 (2) of Act No. 101/2000 Coll., referring to his answer

inspection body of 21 August 2017, explanations during the oral hearing and the local

investigation carried out on 12 October 2017 and a letter dated 15 November 2017. Administrative body

of the first instance, according to the accused in the contested order, was based on an incomplete finding

therefore reached the wrong legal conclusion on the commission of the offense.

The accused also expressed the belief that the location of the camera system in his apartment building

is in full compliance with the opinion of the Office No. 1/2016.

In accordance with Section 150 (3) of the Administrative Procedure Code, the order was revoked and the administrative order

was revoked

the first instance body continued the proceedings.

On the basis of the collected file material, the administrative body issued the first instance on

April 9, 2018 decision no. UOOU-00051 / 18-8, according to which the accused committed an offense

according to § 44 par. 2 let. e) of Act No. 101/2000 Coll. in the form of negligence by being the administrator

personal data in the sense of § 4 letter j) of Act No. 101/2000 Coll. in the period from 1 June 2000

(ie since the entry into force of Act No. 101/2000 Coll.) at least until 12 October 2017

personal data without the consent of the data subject, except in cases specified by law.

The accused processed the personal data of the subtenants of his apartment building without his consent

through

cameras monitoring the area in front of the house (sidewalk between the house

and front garden and part of the access sidewalk), entrance door to the house, hallway

from the front door to the house to the elevator door, a niche with mailboxes

and notice board, entrance to the elevator, stairs and entrances to 14 apartments, thus violating the obligation

stipulated in § 5 paragraph 2 of Act No. 101/2000 Coll., ie the obligation to process personal data

with the consent of the data subjects or in the cases specified in § 5 para. a) to g) of this

of the law. The administrative body of the first instance imposed a fine of

60,000 CZK.

On April 26, 2018, the accused filed a proper appeal against this decision.

parts

therefore

in that

degrees

of the first

administrative authority

In the first place, according to him, the accused objects to an incorrectly established factual situation, which he has already

objected to

in opposition to the order. The accused is of the opinion that the location

cameras in his apartment building

is in full compliance with the opinion of the Office No. 1/2016.

Furthermore, the accused believes that the consent of the inhabitants of the apartment building with the processing

their personal data via camera

documented sufficiently

by submitting subleases for apartments that contain explicit consent

with the processing of personal data, witness statements and notices of operation

camera system, which is located directly at the entrance to the house. According to the accused, he is

the consent thus granted is fully sufficient, as it is a free act of will in the transaction

process, which depends entirely on the will of the person interested in the apartment, whether he accepts such a proposal or

not.

Decision

indicates

considered unreviewable.

The accused also considers the settlement of his objection to the compliance of the placed persons to be unreviewable

cameras with the opinion of the Office No. 1/2016, as the view that the conditions of operation of the camera

system violate this view in particular with regard to its points 6 and 7, it is not, in his view

not justified at all.

The accused also identifies the part of the decision concerning the statement of reasons as unreviewable

the type of sentence and its assessment, where the administrative authority takes into account that the tracking of persons from entry
to the apartment building until the moment of entering your apartment is highly invasive
invasion of the privacy of these persons. He further argues that it is not divorced why the number of 50-60 people
increases the seriousness of the offense and also according to the accused is not defined time for which the alleged
personal data was processed.
The accused also categorically disagrees with the conclusion that the operation of the camera system
in his apartment building is an extremely invasive intrusion into private and personal life
residents of the apartment building and with the conclusion that this conduct is in conflict with Articles 7 and 10 of the Charter
fundamental rights and freedoms of the Czech Republic. According to the accused, the administrative body of the first instance insufficiently
applied the principle of proportionality to the situation, as it is a common part of the house,
in which all subtenants, their visitors and other persons move, and therefore can not go
intrusion on the privacy of these persons.
In conclusion, on the basis of all the facts mentioned by him, the accused requests that
the President of the Office annulled the contested decision for its illegality and remanded the case
administrative authority of the first instance for further proceedings.
The appellate body examined the contested decision in its entirety, including the process which
preceded its publication, and reached the following conclusions.
As regards the legal title of the processing of personal data by the accused, the Appellate Body states that under
During the inspection, the accused stated that he had decided to take a camera recording himself and in advance
did not inform the persons accommodated in his apartment building and their consents to the processing
personal data through the installed camera system is not able to accuse
document as it does not have them, as can be seen from the inspection report (p. 7).

Consents to the processing of personal data using the camera system, which are included

sublease agreement, the accused proved only in the administrative proceedings, and only in five

subtenants (under three subleases). In subleases that

concluded with the subtenants, as the tenant, the administrator of the apartment building of the accused, Mrs.

Crime prevention is mentioned as the reason for processing personal data, provided that

personal data will not be provided to a third party other than law enforcement authorities and that

the record is kept for 7 days. All subleases submitted by the accused

as part of the administrative proceedings, they were concluded with the subtenants only after the end of the control

proceedings

(Contracts are dated December 7, 2017, January 6, 2018 and February 3, 2018).

For proving consent to the processing of personal data through a camera system

nor can a statement about informing subtenants with their personal processing be considered

data through a camera system from a real estate agent, Mr.

and the manager of an apartment building owned by the accused, Mrs.

, which

subleases apartments in this house (in both cases they are cooperating persons

with the accused), which the accused sent to the Office within the control proceedings on 15 November 2017.

Based on the above facts, it can be concluded that at the time of the offense

defendant as defined in the operative part of the decision of the administrative body of first instance, the accused

did not have the consent of the subtenants of his apartment building to the processing of their personal

data through a camera system located in this house.

Another legal title that would be theoretically applicable in this case is a legal title

according to § 5 par. 2 let. e) of Act No. 101/2000 Coll., according to which personal data may be processed

without consent, if this is necessary to protect the rights and legally protected interests of the administrator,

the recipient or other persons concerned, but such processing must not be unlawful

data subject to protect his or her private and personal life.

Accused, as evidenced by his response of August 21, 2017 and the official record

on the implementation of the inspection of 13 October 2017, as a reason for processing personal
The data raised concerns about property, crime prevention and security, based on it
alleged minor damage to common areas and theft of historically valuable
mailboxes from the ground floor of the house, which he did not document. To no serious event
did not occur in the apartment building (page 6 of the inspection report). The appellate body therefore considers
that in this case the condition of necessity necessary for the application of the legal title is not fulfilled
processing of personal data according to § 5 par. 2 let. e) of Act No. 101/2000 Coll., also with regard to
on the inadequacy of the processing of personal data by the accused through a camera
system.
The accused considers that the personal data processed by him through
camera system is in accordance with the opinion of the Office No. 1/2016. In this opinion,
which replaces the previous opinion of the Office No. 1/2008,
particular emphasis is placed
on the subsidiarity and proportionality of the use of the camera system. The camera system should be
qualified and necessary to achieve its objective (eg to detect the perpetrator of the theft), at the same time
However, he did not unduly interfere with the right to privacy of all the people on the premises
apartment building can move. It is therefore advisable to combine the camera system with others
means (eg door locks, bars, etc.), which is in the above opinion

explicitly mentioned. It is further stated in this opinion of the Office that while monitoring the premises
such as cellars and attics and entrances to them, garages, carriage houses and letterbox areas,
The building's exterior (and its surroundings) usually invades privacy to a reasonable extent, as well
as monitoring of entrance doors to lifts and stairs, including entrance corridors to them,
in the case of camera surveillance of the front door to the apartment, which can basically be more
Telling about the private life of the inhabitants of the house is already a serious invasion of privacy
therefore only in exceptional and justified cases

and with the consent of the occupants of the flats concerned.

In the present case, it is also necessary to take into account, as has already been stated in the administrative decision

authority of the first instance that the installed CCTV system monitors and records continuously

all the way from the entrance to the apartment building to the apartment that a particular person lives in,

that is, the activities of everyone who enters or leaves the apartment building, everyone who

enters or leaves the apartment. People who live in the house have no other

the possibility to come and go to this residence only by entering the apartment building,

while the whole route is under the constant supervision of the camera system. They are in detail

the camera system also occupies the doors to the apartments, which is according to the opinion quoted above

No. 1/2016 (to which the accused refers) serious interference with the privacy of the monitored persons.

The appellate body therefore finds that the processing of personal data through the camera

system does not allow the accused to apply the legal title according to § 5 paragraph 2 letter e) of the Act

No. 101/2000 Coll., as the interference with the privacy of the inhabitants of the apartment building is with regard to the above

stated considerably disproportionate.

The proportionality test was thus an administrative body of first instance within its justification

decision is implemented quite sufficiently (see page 8), there is a clear justification why

the conditions of the processing carried out by the accused are contrary to that opinion, namely

not only with points 6 and 7, to which the accused refers in his argument. In any case

thus, the unreviewability of the decision in this section cannot be objected to.

As regards the administrative penalty imposed, the appellate body states that the administrative body of the first instance

he gave sufficient reasons for his amount in his decision, stating that he had taken it into account in particular

to the nature and seriousness of the offense, which he sees in monitoring people from entering the housing

the house until the moment of entering your apartment (see page 9), including persons who subten

leads to rented apartments. This is a truly highly invasive invasion of privacy

data subjects, which is contrary to Articles 7 and 10 of the Charter of Fundamental Rights and Freedoms.

The number of affected data subjects, ie subtenants of the apartment building, approx. 50 to 60 persons

the seriousness of the offense increases, as it is not a small number of people, ie several individuals, but by tens. As a result, the higher the number of entities involved, the greater the severity offense. It is not clear how this should be further administrative justified by the first instance authority.

The period during which the illegal processing of personal data took place is defined in the statement of the contested decision. It is therefore not true that it was not defined, as the accused claims. This is the period since the entry into force of Act No. 101/2000 Coll., Ie June 1, 2000 (camera the system was already installed in 1999, as is apparent from the defendant 's statement of

August 21, 2017 and from the inspection report, against which the accused did not object) at least until October 12, 2017, when the inspection was performed.

It can therefore be concluded that the Appellate Body, on all the above grounds, arguments rejected the party expressed in the appeal and after an overall examination did not find the contested decision illegal, nor did it find any errors of procedure, which preceded this decision. The appellate body also found no grounds for reduction of the amount of the fine imposed.

On the basis of all the above, the Appellate Body ruled as set out in opinion of this Decision.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, June 14, 2018

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

For correctness of execution: