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Ref. UOOU-06442 / 15-13

DECISION

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

§ 29 and § 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 15 September 2015

according to § 152 par. 5 let. b) of the Administrative Procedure Code as follows:

Dismissal of the party to the proceedings, Revírní bratrské pokladny, health insurance companies, with registered office

Michálkovická 108, 710 15 Slezská Ostrava, IČ: 47673036, filed against the decision of the Office

for personal data protection ref. UOOU-06442 / 15-6 of 20 July 2015, is rejected

and the contested decision is upheld.

Justification

Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. b)

Act No. 101/2000 Coll. in connection with the processing of inaccurate personal data of the insured

was initiated by an order of the Office for Personal Data Protection (hereinafter referred to as the “Office”) ref. UOOU-

06442 / 15-3 of 15 June 2015, which was a party to the proceedings, the District Treasury,

health insurance company, with its registered office at Michálkovická 108, 710 15 Slezská Ostrava, IČ: 47673036,

delivered on June 15, 2015.

The basis for initiating the proceedings was the inspection protocol ref. UOOU-09920 / 14-12 of

February 25, 2015 and file material collected during the inspection performed at the participant

management

Inspector of the Office PaedDr. Jana Rybínová on December 4, 2014

to 24 February 2015, including the settlement of objections to audit findings ref. UOOU-09920 / 14-16

of 14 April 2015. The initiation of the inspection was the notification of the offense, which

The Police of the Czech Republic made by letter File no. KRPB-117803-11 / PŘ-2014-060211 of

8 October 2014 and which was delivered to the Office together with the attached documentation on 10 October 2014.

It was clear from the file collected by the administrative authority of the first instance that

the party to the proceedings, Ing. P., without his knowledge. His personal information

were obtained through the form "Application for registration of the insured" during the performance

brokerage activities provided by RK Easy Reality s.r.o., with its registered office on 28.

října 68/165, 709 00 Ostrava - Mariánské Hory, IČ: 28660692 (hereinafter referred to as „RK Easy Reality

s.r.o. ”), as a processor of personal data. The person who recruited the insured, then

was supposed to be J. M. on the basis of the mandate agreement of 11 October 2013, which he had

to provide the given activity for the company RK Easy Reality s.r.o. With RK Easy

Reality s.r.o. the party to the proceedings had concluded a contract for the registration of policyholders, the

The annex was the code of ethics of the Association of Health Insurance Companies, as well as the processing agreement

personal data concluded in accordance with Act No. 101/2000 Coll. Both contracts have been concluded

on July 22, 2013. The contract on the registration of policyholders was terminated on

December 31, 2013

In this context, Ing. P. stated that he wanted to unsubscribe from General on May 7, 2014

health insurance. However, he learned from the worker that he was no longer an insured person for this health care

insurance company, but is registered as the insured of the party to the proceedings. Then the party to the proceedings

contacted and was informed that on 7 December 2013 he had concluded a health care contract

insurance, with his contractual partner being represented by M. P. Therefore, he called M.

P. joined. He referred him to another worker, J. M., and he to M. U. Not last

however, Ing. P. clarified the alleged forgery of the contract, however, he assured

him to oversee the termination of the contract.

It is also apparent from the file that the above-mentioned contract was to be concluded externally

employee of Real Estate Agency Easy Reality s.r.o. (from March 4, 2014, the name of the company was changed to Realitní

partners s.r.o.), the contact person being J. M. This then stated that he was concluding for him

contracts M.U. In January 2014, M. U. brought him about 150 applications, which were subsequently submitted by J. M.

handed over to the CEO of RK Easy Reality s.r.o. M. P. When he later asked for it

paying the reward, he learned that there is a problem with some of the information in the completed applications.

M. U. himself subsequently testified that he bought about 100 completed pieces from an unknown man

health insurance applications. According to him, these applications must have included an application

Ing. P. These applications, as well as those which he himself processed, were handed over by J. M, who submitted them to M.

P.

Furthermore, it was clear from the collected documents that the application of Ing. P. was written by contract

an employee who was an employee of RK Easy Reality s.r.o., which he represented

M. P. The application was written on December 7, 2013 and contained all the required information

including the signature, however, as stated, because the contract staff cannot obtain

copies of personal documents, it is not possible to compare the authenticity of the signature on the application with that on

document. If someone sends a request to cancel the application, the signature on the request is compared with

signature on the application and a preliminary consent to the cancellation of the application will be sent. After

the submission of a confirmation of the so - called withdrawal, which is issued to the client by the original health insurance

company, is

the application is canceled and this information is passed on to the original health insurance company. Party

proceedings also submitted a copy of the application of Ing. P., which, among other things, contained a registration number

and telephone number

contact to the dealer, who in this case was M. P. It also contained personal data of Ing. P.

in the range of the insured's number, date of commencement of new insurance, category of insurance, date

birth, surname, name, nationality, past health insurance company code, address

domicile, state, signature, place and date of signature.

As part of the inspection, the party to the proceedings also stated that it was recruiting new policyholders

either regular employees of a fixed-income health insurance company or contractors,

which rewards are provided depending on the number of contracts concluded. If the application

handed over to the health insurance company by the contracting entity, the regular staff member shall carry out a

completeness check

all necessary data and once a month this personal data is checked yet

in the Central Register of Insured Persons. In case of discrepancies, the new insured is contacted.

On the basis of the above, the administrative authority of the first instance found that the party to the proceedings

committed an administrative offense pursuant to § 45 para. b) of Act No. 101/2000 Coll. and by ordering him

a fine of CZK 5,000 was imposed.

On 23 June 2015, the Office received an objection from a party to the proceedings against the above

order.

In the statement of objections, the party stated that in order to remedy the deficiencies considered the same

breach of the obligation set by the controller of personal data in § 5 par. 1 let. c) of the Act

No. 101/2000 Coll. in connection with the processing of personal data Ing. P., at the same time

period, an order has already been issued ref. UOOU-05562 / 15-5, which was delivered to the party on

13 May 2015. The party complied with the imposed obligations and sent them on 8 June 2015

a written report on the implementation of the specified measures to the Office inspector. Also on June 10, 2015

the party to the proceedings has paid the costs of the administrative proceedings. With regard to the provisions of § 48 para. 2

of the Administrative Procedure Code, which stipulates that an obligation may be imposed on the same person for the same

reason only

once, the party to the proceedings in his opposition proposed that the Office order, ie order ref. UOOU-

06442 / 15-3 of 15 June 2015, repealed in full.

In accordance with § 150 paragraph 3 of Act No. 500/2004 Coll. the order was canceled by the resistance

and the administrative body of the first instance continued the administrative proceedings.

The party 's argument that no more obligations can be imposed on the same person for the same reason

more than once, the administrative authority of the first instance stated that the order that was issued on the basis of

which imposed an implementing measure on the party

verification of the identity of all applicants for re-registration of health insurance and in the provision of guarantees

technical and organizational security of personal data protection in processing contracts

personal data which a party concludes with third parties was not a sanction,

but remedial measures in the sense of § 40 of Act No. 101/2000 Coll. Imposition of remedial measures

therefore, it cannot constitute an obstacle to the case decided in the sanction proceedings concerning the suspicion of

committing an administrative offense pursuant to Section 45 of Act No. 101/2000 Coll.

From a factual point of view, the administrative body of the first instance on the basis of the collected documents

considered that it had been established that the party had breached the obligations laid down in its conduct

in § 5 par. 1 let. c) of Act No. 101/2000 Coll. and thus committed an administrative offense under § 45 para. 1

letter b) of Act No. 101/2000 Coll. By decision no. UOOU-06442 / 15-6 of 20 July

In 2015 (the “Decision”), a fine of CZK 5,000 was imposed on him.

In determining the amount of the sanction, aggravating circumstances at the time of processing were taken into account

inaccurate personal data (period exceeding 6 months). In terms of administrative severity

the first instance authority assessed the consequence of the infringement as an aggravating criterion

party, ie the burden placed on the data subject concerned which he was forced to deal with

the situation arises, for example, by filing a criminal complaint. Manner of participant infringement

was not assessed by the first instance administrative authority as an aggravating or mitigating circumstance.

In the opinion of the administrative body of the first instance, the party to the proceedings committed an administrative offense

the conduct described in the statement, ie the processing of inaccurate personal data of the client,

which is basically the usual way in which Act No. 101/2000 Coll. violated. To this

therefore, the administrative authority of the first instance did not take the sanction into account when considering the amount

of the sanction. Like

the mitigating circumstance took into account the number of persons concerned by the administrative authority of the first

instance

data subjects, ie one, and in particular to the fact that the party unauthorized

re-registration with ex tunc effects.

The party subsequently challenged the decision by proper appeal. In the dissolution, he stated that he considered

that he fulfilled the obligations imposed in the provision of § 5 par. c) of Act No. 101/2000 Coll. From this

reason and further with regard to the provisions of § 48 of the Administrative Procedure Code, according to which it is possible

from the same

reason to impose the obligation on the same person only once, he requested that the decision be annulled

and proceedings stopped.

In support of its claim, the party stated above that the findings in question

concerning breach of obligations in the processing of personal data Ing. P., as identical

time period has already been decided. In this connection, the order no. UOOU-

05562 / 15-5, which was delivered to the party on 13 May 2015, by which it was imposed

term measures to eliminate the identified deficiencies. Obligations imposed by the party to the proceedings

complied with and on 8 June 2015 sent a written report on compliance to the Office to the Office

measures. On 10 June 2015, the party also paid the costs of the administrative proceedings.

With regard to the obligations set out in § 5 para. c) of Act No. 101/2000 Coll. party to the proceedings

he reiterated his view that this had been fulfilled by him. Application Ing. P. containing

the consent to the "data registration" was submitted to the party to the proceedings as part of the implementation

"Contracts on the registration of policyholders" and with these data was based on the provisions of § 21

paragraph 2 of Act No. 280/1992 Coll., on departmental, branch, corporate and other health care

insurance companies, treated as accurate data. At the moment when the opposite was found, ie that

the insured's signature on the application is not genuine, the correction was made, the personal data in question

liquidated and there was no burden on the data subject concerned. As for the claim, according to

of which to write the application Ing. P. did not occur in his presence, and there was no way

verified, the party to the proceedings stated that it did not stipulate any legal regulation

obligation to verify

the identity of the person completing the application, eg by presenting a document

identity, which is not even possible in some cases, especially when the application is

sent by mail. Act No. 48/1997 Coll., On Public Health Insurance and on Amendments a

supplementing some related laws, does not set any specific conditions as to

the application is to be filed or its mandatory particulars. On the contrary, it is an insurance company

is obliged to accept the insured's application in accordance with the said Act. That's why they are

measures are taken to prevent the establishment of an insurance relationship for those persons who do so in

the facts did not show will. These measures are, in particular, checking the accuracy of the data

listed on the application in the form of control of data in the Central Register of Insured and subsequent

sending written information directly to the insured that the insurance company has accepted his application when he has

this, of course, the opportunity to inform the insurance company that he did not complete the application.

In the opinion of the party to the proceedings, the fact that the only one inaccurately is also worth noting

The personal data processed by the insured was his signature, which the insurance company does not have at his disposal

no more flexible tool for verifying it than notifying the policyholder in writing.

Improper handling of personal data did not occur due to errors of the processor or

administrator, but because of the intentional misconduct of the specific person who carried out this activity

carried out for the purpose of self-enrichment.

The Appellate Body examined the contested decision in its entirety, including the

which preceded its release. In this context, the Appellate Body dealt in particular

arguments of the party expressed in the appeal.

Above all, the appellate body fully agreed with the arguments of the first administrative body

degree, which stated that the order ref. UOOU-05562 / 15-5, which was issued on the basis of made

control and imposed measures to remedy the shortcomings identified, both in terms of implementation

verification of the identity of all applicants for re-registration of health insurance and in the provision of guarantees

technical and organizational security of personal data into processing contracts

personal data which a party concludes with third parties was not a sanction,

but remedial measures in the sense of § 40 of Act No. 101/2000 Coll. Imposition of remedial measures

then in no case can it constitute an obstacle to the case decided in the sanction proceedings conducted

on the basis of suspicion of committing an administrative offense pursuant to Section 45 of Act No. 101/2000 Coll.

In other words, the provision of § 48 para. 2 of the Administrative Procedure Code, according to which “to impose the same the obligation can be the same for the same person only once for the same reason ”cumulatively requires agreement in three parameters. That is, to be: 1. the same liable person; 2. the same reason; 3. the same imposed obligation. In this case, however, there is clearly a match in the parameters only sub 1 and 2, but not in the third parameter. Sanction for an administrative offense pursuant to Section 45 Act No. 101/2000 Coll. namely, it cannot be confused with corrective measures pursuant to Section 40 of the Act No. 101/2000 Coll. The party 's arguments seeking an obstacle decided pursuant to Section 48 of the Administrative Procedure Code, ie the appellate body did not accept it.

In connection with the fulfillment of the obligation stipulated in § 5 par. c) of Act No. 101/2000 Coll.

The Appellate Body considered it necessary in particular to recall that the key data the item that has been processed in this context is the will of the data subject to be insured of the party to the proceedings and not a signature which is merely a formal confirmation of this will, resp. legal proceedings in question. Therefore, if the data subject's lack of will this person should not be registered as an insured person, as there is no legal reason for him or her. Therefore, special attention must be paid to verifying the accuracy of personal data in terms of verification of the data subject's expression of will. Proper and timely identification of the partner is therefore from the party of the person (or the person's representative) against whom certain legal proceedings are directed, a natural and initial act which is a basic prerequisite for implementation negotiated performance. From this point of view, it is completely irrelevant that Act No. 48/1997 Coll. does not set out any specific conditions as to how the application is to be filed mandatory requirements. In any event, the party was bound by a general obligation according to § 5 par. 1 let. c) of Act No. 101/2000 Coll., the fulfillment of which was also with regard to insufficient forms of personal data collection. Evidently it should include

some immediate feedback, eg by telephone or

information demonstrably delivered by post, etc. For completeness, it must be added that the provisions of § 21

paragraph 2 of Act No. 280/1992 Coll., to which the party to the proceedings referred, no exception

from the obligation to process only accurate personal data.

The importance of checking the accuracy of the personal data processed is then intensified, especially when

if the party's practice allows the initial recruitment of insured persons to be carried out by unknowns

persons in unknown circumstances. In this context

namely, it must be borne in mind that

The documentation obtained by the Police of the Czech Republic shows that the application of Ing. P. was

purchased along with about a hundred more applications from an unknown man on the train

railway station in Brno (see official record on submission of explanations ref. KRPB-117803-10 / ČJ-2014-

060211 of 5 September 2014).

However, in the context of verifying the accuracy of the personal data collected, the party to the proceedings shall:

specific circumstances completely disappeared and focused on the control of data in the Central Register

insured, which is insufficient in this respect. For the only control tool above

in that sense, it would therefore be possible to recognize only the subsequent party mentioned in the proceedings

sending written information directly to the insured, but only if it would be immediate. In that

In this context, however, it should be noted that Ing. P. such contact by the participant

proceedings denied (see the official record of the submission of explanations ref. KRPB-117803-1 / ČJ-2014-060320 from

on May 9, 2014: "I did not receive any forms or information from that insurance company.") a

the correction took place only on the initiative of Ing. P. It is therefore not possible to agree with the participant 's argument

proceedings under which no burden has been placed on the data subject concerned.

On the basis of the above arguments of the party concerning the fulfillment of the obligation

stipulated in § 5 par. 1 let. c) of Act No. 101/2000 Coll. therefore, the appeal body did not accept it.

Overall, therefore, the appellate body expressed the party's arguments expressed in the appeal

did not find reasonable. Likewise, the appellate body did not find it after an overall examination

in the procedure of the administrative authority of the first instance any errors and considers it reasonable

and the amount of the fine imposed.

For all the above reasons, he therefore decided as set out in the operative part

of this Decision.

Yippee

Instruction: Pursuant to the provisions of Section 91, Paragraph 1 of Act No. 500/2004 Coll.,

Administrative Procedure Code cannot be revoked.

Prague, September 15, 2015

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman