OFFICE FOR PERSONAL DATA PROTECTION

Lt. Col. Sochora 27, 170 00 Prague 7

tel .: 234 665 111, fax: 234 665 444

posta@uoou.cz, www.uoou.cz

* UOOUX00BVN13 *

Ref. UOOU-09774 / 17-25

DECISION

Chairwoman of the Office for Personal Data Protection as an 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 according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 18 April 2018 according to § 152 par. 6 let. b) of Act No. 500/2004 Coll. thus:

Dismissal of the party to the proceedings, the company XXXXXX, against the decision of the Office for Personal Protection data ref. UOOU-09774 / 17-19 of 15 January 2018, is rejected and the contested decision is confirmed.

Justification

By decision no. UOOU-09774 / 17-19 of 15 January 2018 ('the decision') was XXXXXX (hereinafter referred to as the “accused”), found guilty of committing an offense under Section 45 paragraph 1 (a) e) of Act No. 101/2000 Coll., because without the consent of data subjects, and without had another legal title for the processing of personal data, processed personal data an unspecified number of people in the hundreds of thousands, at least in the range of name, surname, address and telephone number obtained under the license agreement concluded on 5 September 2012 with XXXXXX, a natural person doing business according to the Trade Licensing Act, with its registered office at XXXXXX, licensed contracts concluded on September 19, 2013 with XXXXXX, and based on the order of October 25, 2012 from XXXXXX, and kept them at least until the start of the inspection performed on the accused from 16 November 2016 to 19 September 2017 by the Office's inspector.

By doing so, the accused violated the obligation stipulated in § 5 paragraph 2 of Act No. 101/2000 Coll.,
thus the obligation to process personal data with the consent of the data subject or in cases
stipulated in § 5 par. 2 let. a) to g) of this Act, for which she was, according to § 35 letter b) of the Act
No. 250/2016 Coll., the Act on Liability for Misdemeanors and Proceedings thereon (hereinafter referred to as “misdemeanor
Act ”), and in accordance with Section 45, Paragraph 3 of Act No. 101/2000 Coll. imposed a fine of CZK 800,000.
The defendants subsequently challenged the appeal through their lawyer,
which was delivered to the Office on January 26, 2018. In the filed appeal, the accused disputes the course of business
proceedings prior to the issuance of the decision. In the opinion of the accused notice of initiation of administrative

the procedure does not meet the requirements set out in Section 73 of the Misdemeanor Act, as it does not contain a place
and the time of the offense and the means of proof kept by the administrative authority of the first instance
to initiate proceedings. The defendant further states that the definition of the act by the administrative authority of the first
instance
so that it "processed personal data on the basis of licensing agreements without the consent of the entities" is not
in itself a sufficient definition of illegality, as § 5 para. 2 of Act No. 101/2000
Sb. defines other legal titles of personal data processing than consent, for example in § 5
paragraph 2 (a) d) of Act No. 101/2000 Coll., when it is possible to perform processing without consent
the data subject in respect of lawfully published data.
The accused also emphasized that the mere conclusion of licensing agreements was not proof of the conduct
processing and the administrative authority of first instance did not provide evidence to conclude that the accused
processed personal data of an unspecified number of people in the hundreds of thousands.
The administrative body of the first instance should also have violated § 36 para. 3 of the Administrative Procedure Code,
according to which it has
accused opportunity to comment on the basis of the decision. The lawyer was accused
twice had the opportunity to comment on the background, but this should only be done formally,
as the file did not contain the specific documents on the basis of which the administrative authority of the first intended

degree to decide. Although the facts found during the inspection may be the only basis
the decision on the offense, in the opinion of the accused, continues in such a case, the duty of the office continues
pursuant to Section 51 of the Administrative Procedure Code, to provide all evidence suitable for ascertaining the state of
affairs, for which purpose
which is in conflict with the provisions of Section 52 of the Administrative Procedure Code.
Furthermore, the accused objects to the conflict between the contested decision and Section 93 of the Misdemeanor Act,
which
precisely defines the requirements of the decision and alleges the same shortcomings as in the notification
on the initiation of proceedings (lack of determination of place, time and manner of commission). Grounds for the decision
then complains that it does not contain the basis for its issuance, considerations by which the administrative body of the first
degrees in their evaluation and interpretation, and is therefore in conflict with § 68 paragraphs 1 and 3 of the Administrative
order. In addition, according to the accused, the first-instance administrative body did not deal with her
claiming that it had taken all the necessary measures to avert the offense which it could have had
as a result of effective release from liability for the offense within the meaning of § 21 par. 1 of the offense
of the law.
The defendant is also accused of an error of assessment by the accused
findings. The controller of personal data should be the client accused (a company that
enters the order) and the accused is only the processor, using for processing
in the sense of § 14 of Act No. 101/2000 Coll. sub-processor. The accused further disagrees further
provided that the administrative body of the first instance relied on the text of the licensing agreements in relation to the scope
personal data processed, without substantiating the allegations that they actually took place
to such processing and to such an extent. Therefore, the administrative body of the first instance could not occur
to find out that the provisions of Section 5, Paragraph 2 of Act No. 101/2000 Coll.
The last part of the appeal is devoted to the accused's objection that the sanction imposed was disproportionate
and breach of the principle of imposing similar sanctions on similarly serious acts. The amount of the fine should be
for the accused liquidation and disproportionately harsh. Accused of defending her claim in dismissal

states the amount of several fines imposed by the administrative body in various content cases.

He argues with several decisions of the Supreme Administrative Court and the Constitutional Court

concerning the obligation of the administrative body to take into account personal and property relations

and emphasizes that the level of sanctions imposed must not be of a liquidating nature.

Furthermore, according to the accused, it should be taken into account that she cooperated with the Office both during the

inspection,

so in the course of the infringement proceedings, and the fact that it has already been imposed remedial measures to which

complied.

Finally, the accused claims that the decision of the administrative body of the first instance should be annulled

and proceedings stopped.

The appellate body examined the contested decision in its entirety, including the process which

preceded its publication, and came to the following conclusions:

The defendant's objection that the notice of initiation of the proceedings does not contain the statutory

requisites, the appellate body states that the lawyer accused in his dismissal in the enumeration

The requirements of the notice of initiation of the proceedings erroneously refer to § 73 of the Misdemeanor Act, where

the procedure of the body of the Police of the Czech Republic, the Military Police or another administrative body in

notification of a reasonable suspicion of a misdemeanor to the competent administrative authority

in cases where the above-mentioned administrative authorities are not competent to deal with this offense.

According to the explanatory memorandum to the Act on Misdemeanors, this provision is a special provision to § 42

Administrative Procedure Code. However, this is not the case, but the initiation of ex officio proceedings

official according to § 78 of the Misdemeanor Act, which is also stated in the notification itself

administrative authority of the first instance on the initiation of administrative proceedings. The essentials of this notice are

then regulated in § 78 paragraph 3 of the same Act, according to which the notification should contain a description

the act to be decided in the proceedings and its preliminary legal classification. None

other essentials are not listed here. Notice of initiation of proceedings both mentioned mandatory

met the requirements. As regards the definition of preliminary legal qualification in the notice, administrative
the authority of first instance determined exactly what the offense of the accused should have been, if
stated that the accused had breached his duty
laid down in § 5 paragraph 2 of the Act
No. 101/2000 Coll., as this obligation also includes the obligations set out in § 5 para. 2
letter a) to g) of Act No. 101/2000 Coll. For the sake of completeness, the appellate body states that according to § 78 par. 4
of the Misdemeanor Act, the legal qualification of the act may be changed during the proceedings. Administrative
The first instance body then stated in its decision that the processing of personal data
none of the other legal titles described in Article 5 (2) (a) a) to g) of the Act
No. 101/2000 Coll.
Furthermore, the administrative body of the first instance by the accused is accused of in dismissal
the contested decision does not contain any evidence from which it inferred illegal
processing of personal data. This statement is not based on truth, as in the statement of reasons
The reasons for its opinion, including the basis for its issuance, are stated in the contested decision.
The administrative authority of the first instance states why the processing of personal data did not take place
accused in accordance with Act No. 101/2000 Coll. Part of the administrative file of the misdemeanor proceedings
The defendant is also a copy of the database, which the accused handed over to the Office on 1 August 2016
control and which, according to the statement of the accused of 21 April 2017, contains all of it
personal data processed for XXXXXX on the basis of the license agreement of
December 9, 2015. This database contains a total of 2,467,083 records. Each record has
name, surname, telephone number and address. Legal titles for personal data processing
however, the accused did not document in the database at the request of the administrative body of the first instance. Legal
the accused's representative stated in his reply to the Office dated 5 December 2017 that the company did not
must prove any facts proving the legal title to the personal data for which
there is no processing, due to the already completed control procedure. This statement
however, the accused is wrong. The defendant, as mentioned above, processed personal data, which

she admitted in her statement and was therefore the controller of that personal data, which she subsequently made handed over to XXXXXX. The processing of personal data of the accused consisted mainly in their

collection, storage and other uses to create databases for its clients based on orders, in their search and use. The accused was thus fulfilled by this activity definition of personal data processing according to § 4 letter e) of Act No. 101/2000 Coll. She was accused as the controller of this personal data, as it determined the purpose and means of personal processing data in the course of their business. Structuring of personal data according to client requirements, for which the databases were created does not change the status of the accused as a personal administrator data. The accused did not document the legal titles for further processing of personal data in the database, which acquired under license agreements from XXXXXX, XXXXXX and on the basis of an order from XXXXXX. As stated in the statement of reasons for the decision of the administrative body of the first degree, such processing cannot be subordinated to the processing of personal data according to § 5 par. d) of Act No. 101/2000 Coll., as this provision is a general provision. When processing of personal data for the purpose of goods and services, the provisions of § 5 para. 5 must be applied Act No. 101/2000 Coll., which is in relation to the provisions of § 5 para. d) of the same Act provision special and therefore has application priority. The accused in the given case processed personal data to a greater extent than the provision of the law allows, as it processed personal data, including telephone numbers, the legal title to the processing of this personal data which would undoubtedly have to be consented was not substantiated. Administrative body of the first instance He further expressly stated the following: “The fact that the personal data obtained by the accused on the basis of license agreements, resp. the above-mentioned orders, according to which there was consent to the addressing guaranteed by the provider, or it should have been legally published data, is not possible consider as an expression of consent meeting the requirements of § 4 letter n) of Act No 101/2000 Sb. According to this provision, consent is considered to be a free and conscious expression of the will of the subject

data subject to the data subject's consent to the processing of personal data. According to § 5 par. 4 of Act No. 101/2000 Coll. in addition, the data subject must be informed when consent is given that for what purpose of processing and for what personal data is consent given to which controller and for which period. The controller must be able to consent to the processing of personal data demonstrate throughout the processing. From the above it is clear that the consent for further processing personal data (creation of databases used to offer trade and services) accused the company, as the trustee, did not have it. ”It is therefore clear from the above that the claim the administrative authority of the first instance mentioned in its opinion was duly substantiated.

With regard to the allegations alleged that the number of persons concerned was not precisely determined, the Appellate Body states that in the case of personal data processing in large quantities in the order of hundreds of thousands, as evidenced by the attached database, the exact quantification of these data is in fact impossible. In this context, it is possible to refer to the decision of the Municipal Court in Prague file no. zn. 11A 83/2017 of 12 October 2017, which states that… it is not necessary to individualize and specify each individual personal data subject. Also in relation to the consideration of The gravity of the plaintiff's infringement is not considered necessary by the court to the number of entities of the personal data affected by the applicant's conduct was precisely quantified 'in one', order of magnitude determination that there were thousands of entities - given the number managed by the applicant or owned units, which are quantified in the statement of the decision - is to consider the severity of and the extent of the infringement is, in the opinion of the court, entirely sufficient. "

The appellate body further states that the administrative body of first instance during the proceedings accused instructed on the possibility to exercise the right to comment on the basis of the decision by letter of December 6, 2017. Inspection of the file took place in the presence of the attorney-at-law accused on 15 December 2017, of which an entry was made in the file. Therefore, it is not possible to correct the body of the first instance to accuse the procedure in violation of § 36 par. 3 of the Administrative Procedure Code, which was observed. On 21 December 2017, the defendant's lawyer then sent a statement to the Office, with which

the administrative body of the first instance duly dealt with the arguments in its

decision of 15 January 2018.

The administrative body of the first instance assesses and examines the file material in its decision-making

as a whole in full. The appellate body states that the administrative proceedings on the offense accused

was initiated duly in accordance with the Misdemeanor Act and the Act on Administrative Procedure and Proceedings

the necessary evidence has been made to ascertain the state of affairs pursuant to Section 52 of the Administrative Procedure

Code.

The defendant's argument that the decision of the administrative body of the first instance is not sufficient

the appellate body states that the decision complied with all the requirements set out above

in § 93 of the Misdemeanor Act and in § 68 of the Administrative Procedure Code. In the statement of reasons by the appeal

The decision states that “the fact that the accused is complying with the remedial measures

measures is not a reason why its conduct could be regarded as

and could thus be released from liability within the meaning of § 21 par. 1

misdemeanor law. Therefore, in view of this proper reasoning, the decision is not possible

considered unreviewable for lack of reasons. Appellate body to the above

It further adds that the liability for the offense consisting in the processing of personal data without

proper legal title cannot be waived by the subsequent adoption of security measures

processed data.

The incorrect legal assessment of the defendant 's position in relation to those being processed

personal data, the appellate body states that the administrative body of first instance in the statement of reasons

stated in his decision why he came to the conclusion that he was accused by the controller of personal data when

He stated that “the accused has determined the purpose and means of the processing of personal data, as personal

it also used the data collected in the course of its business to create databases

for her clients on the basis of orders. ”The accused is therefore undoubtedly a personal administrator

data in the sense of § 4 letter j) of Act No. 101/2000 Coll. Furthermore, the administrative body of the first instance stated that

that the fact that she is accused by the personal data controller does not change anything “or the fact that personal

the data it provided to its clients for a fee were structured as required

individual clients, or that their source was other entities. "

The President of the Office has already commented on the person of the so-called partial processor in the settlement of

objections

(ref. UOOU-11233 / 16-52 of 13 September 2017) filed by the accused against the conclusions of the

on control, so that this concept Act No. 101/2000 Coll. does not know, nor is it introduced by the provisions of § 14

of this Act, therefore the administrative body of the first instance identified this argument of the accused

considered irrelevant.

The appellate body on the issue of insufficient proof of the scope of the personal data processed

states that the database of personal data which is part of the file and to which the accused

is sufficient proof of the scope of the information processed

personal data. It is therefore clear that at least to the extent stated here, ie first name, surname,

address and telephone number, the accused stored personal data and subsequently used them for the purpose

its gainful activities aimed at offering trade and services.

The defendant's assertion that the amount of the fine is indeed liquidating and disproportionately harsh on it is an appeal

the authority states that the accused has not substantiated this fact. Collection of documents accused

in the public register of the Ministry of Justice

as the most up-to-date accountant

document only the balance sheet as of December 31, 2016, stating that the assets of the accused count

CZK 14,734,000 (gross) and CZK 12,399,000 (net) and liabilities CZK 12,399,000, of which equity

amounted to CZK 6,012,000 (in 2015 it amounted to CZK 3,786,000).

When imposing a sanction, the administrative body of the first instance justified its amount in accordance with Section 37 of

the Act

on offenses, taking into account in particular the scope and amount of personal data

processed by the accused and the invasion of privacy that the accused's conduct represented. For
circumstance increasing the gravity of the conduct, the administrative authority of the first instance indicated the period for
which
unauthorized processing of personal data has taken place (ie since their acquisition on the basis of
licensing agreements and orders, up to partial liquidation). Furthermore, the administrative body of the first instance
emphasized the fact that the accused is a professional in a field where there is extensive
processing of personal data, and this fact significantly increases the level of harmfulness of the data
offense. The administrative body of the first considers the accused to be a circumstance reducing the seriousness of the
conduct
the fact that the accused has complied with the remedial measures imposed on her. However
Taking remedial action does not in itself relieve you of liability for the offense
consisting in the processing of personal data without an appropriate legal title.
In the opinion of the Appellate Body, the accused cannot be provided without sufficient evidence of the financial situation
document whether the sanction would be liquidation for the accused. If the accused can not be imposed
to collect the sanction at once, it may request that its payment be distributed in installments in accordance with the provisions
§ 156 of Act No. 280/2009 Coll., Tax Code. Act No. 101/2000 Coll. in the provision of § 45 paragraph 3
allows the imposition of a fine of up to CZK 5,000,000 for the tortious conduct described above. Saved
the fine is thus in the lower half of the possible sanction.
The appellate body states that the amount of the sanction was duly justified, taking into account it
administrative authority of the first instance for both aggravating and mitigating circumstances and appeals
the authority therefore found no reason to change it.
It can therefore be concluded that the appellate body put forward the arguments of the party set out in the present application
dismissed the appeal and, after an overall examination, did not find the contested decision illegal, nor
found no errors in the procedure which preceded the adoption of this decision.
On the basis of all the above, the Appellate Body ruled as indicated
in the operative part 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, April 18, 2018

official stamp imprint

JUDr. Ivana Janů

chairwoman