OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DR4FC *

Ref. UOOU-00179 / 19-19

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10

and § 152 para. 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided pursuant to § 152 para. and),

§ 152 paragraph 5 and § 90 paragraph 1 letter b) of the Administrative Procedure Code as follows:

Decision of the Office for Personal Data Protection ref. UOOU-01096 / 19-10 of 13 May 2019

in the case of the accused, company XXXXXX, is canceled and the case is returned to the administrative body of the first

steps to be renegotiated.

Justification

By decision no. UOOU-00179 / 19-9 of 14 May 2019, the company XXXXXX was indicted

(hereinafter referred to as the “accused”), found guilty of committing offenses pursuant to Section 45 para. d), f)

and h) of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, which

committed the conduct described in the statement. She was fined for tort

CZK 250,000.

The proceedings themselves were initiated by order no. UOOU-00179 / 19-3 of 11 March 2019. Background

for its issuance was a protocol on control ref. UOOU-06436 / 16-165 of April 27, 2018 et seq

file material acquired by the Office inspector Ing. Josef Vacula during the inspection of file no. zn.

UOOU-06436/16 for the accused pursuant to Act No. 255/2012 Coll., On control (control rules), including

settlement of objections by the President of the Office Ref. UOOU-06436 / 16-172 of 21 September 2018.

On March 18, 2019, the accused filed a statement of opposition, in accordance with Section 150 (3) of the Act

No. 500/2004 Coll., Administrative Procedure Code, to cancel the order and the administrative body continued the proceedings

which

resulted in an annulment of the contested decision.

The contested decision was served on the accused on 15 May 2019 and was on 30 May 2019

decomposition filed through the data box. The legal deadlines were thus complied with and the dissolution

was filed on time.

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The accused stated in the appeal that she considered the decision to be clearly illegal

and factually incorrect, finds obvious errors in the procedure of the first instance body, and therefore

annul the contested decision. However, the accused did not provide any further justification and only

added that it would do so in detail within 10 days.

Due to the fact that it was not clear from the filed appeal what the contradiction is seen

with the law or the incorrectness of the decision or procedure which preceded it,

the accused was asked to rectify the filing defects within 10 days. Given the circumstances

as well as the fact that the time limit set by the administrative authority corresponds to the time limit within which

the accused herself announced that she would complete the submission, the time limit could be considered reasonable.

Although

there were no shortcomings of decomposition in the established

within the time limit, the administrative appellate body

examined the contested decision in its entirety, including the process which preceded it

edition, while taking into account the additional justification of 28 May 2019.

In the text of the justification, the accused referred to the administrative proceedings of file no. stamp UOOU-00313/19, which

similarly to the currently reviewed decision, it reacted to the conclusions of the inspection of file no. UOOU-

06436/16, and should therefore be in the legitimate expectation that any deficiencies found in the inspection

are the subject of the above-mentioned "sanction" proceedings, which it provided in the context of those proceedings

all cooperation. At the same time, she raised an objection of limitation of liability and prosecution

offense, but did not develop its argument in this regard in any other way.

It also commented on paragraph 1 of the contested decision, stating that the personal data
processed with the consent of the data subjects, which was limited in time to 10 years,
the purpose of the processing should be to re-arrange short-term loans. Conclusion
the administrative authority of the first instance on the processing of personal data after its purpose has ceased to exist
is not correct. At the same time, the Office should have considered as
the only criterion is the advertising slogans accused, which he considers in terms of factual findings
insufficient.
It also challenged the Office's conclusion that the data subject was not sufficiently informed of the identity of third parties
parties to whom their personal data may be disclosed. In addition, she stated in particular that
On 16 December 2016, the XXXXXX website was updated with a list of personal recipients
data, as evidenced by the attached file deploy.log, which is to prove the content
pages as of the above date, including the list.html file contained in the log
complete list of recipients. Thus, the operative part I, point 2, cannot be true.
Finally, it also contradicted paragraph 3 of the decision. In this context, it noted in particular that
that it has taken all measures to prevent any unauthorized or accidental abuse
personal data, as required by the provisions of Section 13 of Act No. 101/2000 Coll., and all of these
measures, the Office, as the supervisory authority, was to be informed and
he had no objections. In the opinion of the accused, the opinion of the Office on the absence of internal law does not stand up
either
Directive, as the law does not provide for such a specific obligation, but only in general
requires the adoption of technical and other appropriate measures. He adds that to none
security breach has not occurred and the administrative body of the first instance method of security breach
he did not even specify.
On the basis of all the above, the accused proposed to the President of the Office that the defendants
annulled the decision.

After an overall examination of the case, the Appellate Body came to the following conclusions.

First, the appellate body dealt with the characteristics of the proceedings of file no. stamp UOOU-00313/19, which was supposed to be

according to the accused, conducted with the same subject matter. As must be forwarded, administrative proceedings sp. UOOU-00313/19, similarly to the contested decision, followed up on the inspection

performed by the Office inspector Ing. Josef Vacula sp. UOOU-06436/16 and was published

of the shortcomings identified by him. In the case of administrative proceedings file no. mark UOOU-00313/19, however, was the main subject of the proceedings is non-compliance with the corrective measures imposed by the Office inspector

by order of 10 October 2018, ref. UOOU-09378 / 18-3 (copy also kept under ref. UOOU-00313 / 19-2), for which the accused was fined CZK 100,000. The subject of proceedings file no. zn. UOOU-00313 / 19-2 was thus a completely different act, which cannot be confused with the present negotiations. In the case of proceedings for the imposition of measures to correct the file. UOOU-09378/18 can then be point to a different purpose from the current procedure. Corrective action cannot be imposed

in no way confused or linked with the exercise of liability for the offense, since

the goal of each procedure is a completely different matter. While sanctions punish the offender for the offense and thus performs mainly a preventive and repressive function, the purpose of corrective measures is recovery and rectification of the current illegal situation. The imposed remedial measures, in particular

given their meaning and reparative nature, a criminal dimension cannot be granted in the sense European Convention for the Protection of Human Rights and Fundamental Freedoms, which would

bis in idem, as it does not meet the so-called Engel criteria set by the European Court of Human Rights rights (cf. ECtHR Engel v. the Netherlands of 8 June 1976, application no. 5100/71 and others).

As regards the alleged limitation period, it is essential for the assessment of the limitation period that:

Act No. 101/2000 Coll. allows a fine of up to CZK 5,000,000 to be imposed for the tortious conduct in question, since the limitation period in such a case is according to the provisions of § 30 letter b) of the Act

No. 250/2016 Coll. 3 years from the day following the day of the offense. Administrative authority

The first instance in this regard correctly concluded that the offenses he accused of his

committed by their conduct, are by their nature a continuing offense, resp. continuing when it is behind
the day of committing the offense is considered to be the day of termination of the illegal situation, resp. last attack
against an interest protected by law. If the appellate body at this point disregards the fact that
the limitation period thus determined was subsequently interrupted by the issue of an order and so on
of the contested decision, as well as the length of the period itself without interruption due to the time-limit
of the offenses in the operative part of the decision clearly supports the conclusion that the objection
the limitation period cannot be complied with in relation to any of the infringements under discussion.
Next, the appellate body dealt with the alleged proportionality argument
10 years of personal data processing. The accused has already repeated this in the proceedings
several views expressed on the purpose of the processing, which was to be the re-submission of tenders
arranging short-term loans to clients, which should be limited in time
10 years. The consent in question was already the subject of a review in the context of objections to the inspection
findings in Protocol UOOU-06436 / 16-165 of 27 April 2018 (hereinafter referred to as
on control "), where the accused used the same arguments. Appellate body in this
In this context, it finds no reason to deviate from the conclusion already stated, namely that
the stated purpose does not follow from the wording of the consent. The quality of the consent must be assessed
following the objectively determined purpose as presented to the data subjects and not from the point of view
subjective opinion of the accused, as this is the only way to ensure sufficient information
data subjects, who are then free to decide whether to do so
processing permits. The appellate body fully agrees with the opinion of the first administrative body
degree that the consent to the processing of personal data of the applicant shows that
the purpose of the processing is in addition to the transfer of personal data to financial service providers

("Providers") for the purpose of preparing a credit offer only general
marketing address. The accused objected to the repeated authorization
sending

personalized commercial communications containing offers for specific data subjects on

the mediation of other specific loans then does not follow from the text of the consent. If she was processing

thus accused of personal data necessary for the preparation of an offer to conclude a contract

on the provision of financial services between the applicant and the provider

even after their handover

providers, it must be stated that there was no legal title to this, since

the original one expired and for the purposes of personalized marketing addressing was

inapplicable. In accordance with the conclusions of the administrative body of the first instance, it can be concluded that

the accused processed personal data for longer than necessary.

After all, in the case under consideration, such processing would also deny the principle of processing accuracy

personal data, as in addition to the fact that the accused keeps a wide range for this purpose

personal data which change naturally over time (eg data relating to the above

monthly income, months worked, number of children, length of stay at the address,…), you also need

be aware that due to the recurrence of the loan (ie a situation where to provide at least one

loans have probably already taken place), there is also a change in the area of processed data

debts and expenses of the client, which are for the assessment of the application by the financial

providers is undoubtedly one of the key factors. In the absence of a mechanism

ensuring the updating of data, the credit intermediation offer itself could already be

out of date at the time of delivery. Finally

It should be recalled that

the precondition for the correctness of the consent is, in particular, its freedom of granting and information. If so

the data subject is free to decide whether to consent to the processing of his or her data

made such a decision with sufficient knowledge of the characteristics of the intended processing.

Reproduction is an integral part of any transfer of personal data to the recipient

existing personal data (as these subsequently exist on two to some extent

independent places), while at the same time increasing the number of people in possession

personal data concerned, which can undoubtedly be seen as a factor that significantly increases the risk
for the data subject's rights to protection of his personal data and privacy as such. Proper
informing of possible beneficiaries
it must therefore be considered a necessary component
information, as provided for in the provisions of § 5 paragraph 4 and § 11 of Act No. 101/2000 Coll.
Also later adopted Regulation (EU) 2016/679 of the European Parliament and of the Council (General Regulation
on the protection of personal data) does not change this. Similar to Act No. 101/2000 Coll.
Considers, in particular, the freedom to grant it, the specificity, the
information and clarity [see recital 32: “Consent should be given unambiguously
confirmation, which is an expression of free, concrete, informed and unambiguous
consent of the data subject to the processing of personal data (…) ”], and recital 42:“ […] In order to
consent will be informed, the data subject should at least know the identity and purposes of the controller
processing for which his personal data are intended. […]. ”Complementarily, this is only possible
refer to the opinion of WP29, which it provides in the Guidance on consent under Regulation 2016/679 under
point 3.3.1 an interpretation in the sense of the need to specify all the subjects to whom the personal data are to be provided
made available and who are to process this data as additional controllers, namely their
named.
According to the submitted consent to the processing of personal data (see, for example, the legal statement
representative accused of 1 November 2016), as well as the wording of the consent as printed
controlling within the procedure pursuant to Act No. 255/2012 Coll. from the accused website
(see official record ref. UOOU-06436 / 16-78), a complete list of possible recipients should be
located on the XXXXXX website. At the same time from the preview of the website in question

The final conclusions of the inspection (see Part II, point 11 of the inspection report)
the website does not contain such information. Due to the fact that consent except
just link to the XXXXXX website no further information in this regard

did not contain, resp. was not the identity of all potential beneficiaries from it in any way

obvious, one can only reach the conclusion reached by the administrative body of the first instance in the framework of

of the contested decision, namely that the accused violated the obligation set out in § 11 par. 1

Act No. 101/2000 Coll.

In that regard, the appellate body assessed the defendant's evidence submitted in the context of the

decomposition. The deploy.log file is a text file that can be edited in any text editor,

which shows that it was modified on 12 July 2019 at 12:07:56 on Monday,

nor does its content say anything about the content of the website XXXXXX, where according to the information

contained in the consent to the processing of personal data should find a complete list. According to

the defendant's allegation has the log in question to substantiate the content of the XXXXXX website. Not only that

the allegation of the existence of a list of recipients on XXXXXX did not correspond to the text of the consent (which

refers to XXXXXX), which is moreover relevant from the point of view of

not even the alleged facts alleged in this way are evident from him. None of the logs in question

does not imply that the files processed by the script should relate to web content

page XXXXXX, and at the same time it is not clear whether the processed list.html file matches

provided to the list.html file as part of the decomposition, the properties of which, moreover, indicate that it was

modified on Thursday, July 4, 2019 at 7:39:32 PM. In view of all the above,

including that she was accused in a statement of 14 May 2018 containing objections to

the audit report agreed with the audit conclusion on information deficiencies,

she said she was aware of it and was currently working to rectify the fault, he said

the Appellate Body concludes that neither the alleged facts nor the evidence submitted have any bearing on

the correctness of the conclusion of the administrative body of the first no effect. At the same time it is evident that on the day

of filing

objections to the inspection report, the defective condition still persisted.

As regards the contested scope of the findings on the amount of illegally processed personal data

(according to statement I.1. “processed personal data of those interested in the provision of financial services in the order

hundreds of thousands of data subjects ", which is crucial in the context of the case), it should be noted
that they consider the facts of the offenses to be a tort and even a single case of such processing. Closer
however, specifying the number of data processed or data subjects affects the consideration of the amount of the sanction.
The administrative body of the first instance its conclusions on the number of illegally processed personal data
in fact, he relied only on the marketing communications and advertising statements of the accused and these
did not add any other findings. With regard to the principle of material truth, ie the duty of the Office
ascertain all the facts to such an extent that there are no reasonable doubts about them,
the accused's objection of the inadequacy of the facts can be accepted. Many quoted
moreover, the information does not even say anything about how many of the presented numbers were clients of the company
- see eg "up to 12,000 applications are submitted per day in the Czech Republic" or "today has received a loan: 1,278 people
out of 1,300 applicants ". The message acts more like a "misleading advertisement" according to § 2977 of the Civil Code
of the Code or "advertising exaggeration" (so-called dry advertising). These messages cannot
they do not in any way replace the missing findings of fact and cannot justify their gravity
of the offense committed. It is thus up to the administrative authority of first instance to make these findings within
following the procedure and, if so, fail to make the advertising statements themselves
without further consideration when considering the amount of the sanction.
Finally, the appellate body examined paragraph 3 of the contested decision, according to which it had
accused of violating the obligation pursuant to Section 13, Paragraph 2 of Act No. 101/2000 Coll. In the opinion of the accused,
it goes
o formalism, where the law does not prescribe the adoption of any internal directive, and the Office, moreover, did not
have no reservations about the way personal data is secured during the inspection. To this

It should be noted in advance that the accused was repeatedly asked to provide evidence during the inspection
technical and organizational measures to ensure the protection of personal data against their misuse,
however, nothing but evidence was substantiated by the accused, nor was it submitted
any documentation of these measures. As follows from Part II. point 12 of the inspection report,

the accused has already been accused of violating the provision in question during the control proceedings.

Thus, it is not possible to agree with the opinion that the Office would not have to submit (resp.

in this case non-submitted) measures ensuring the security of personal data

any reservations. As for the accused's own arguments, they do not stand either. Obligation

proper security is enshrined in § 13 of Act No. 101/2000 Coll. Provisions of the first paragraph

paragraph is of a general nature and provides for the obligation to take adequate measures (which

basically divided into a technical and organizational nature.) Thus generally formulated obligation is

supplemented, expanded and clarified in the following paragraphs, including inclusion

the obligation to keep proper documentation on the measures taken pursuant to the provisions of Section 13 (2)

of the cited law. It's about

legally established obligation forming together with others

an inseparable set of measures aimed at ensuring the confidentiality and integrity of the data processed.

After all, without proper documentation, it is not even possible to evaluate other measures in mutual

context, review or otherwise assess the adequacy of the level of security adopted. Thus

the above is also reflected in the factual nature of the tort expressed in § 45 par. h)

Act No. 101/2000 Coll., which explicitly refers to the non-implementation of security measures

to § 13 as a whole, and not only to § 13 par. 1 [cf. provisions of letter and (e) of the same paragraph].

Thus, a real breach of security and misuse of personal data is not necessary

presumption of the commission of the offense in question, and any proven abuse would

on the contrary, it could be a reason for applying much stricter sanctions.

In conclusion, due to insufficient findings of fact, the appellant ruled

authority as stated in the opinion. The administrative body of the first instance should in the following proceedings

in particular, to establish the facts properly and to rule on the matter again on that basis.

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, December 20, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)

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Ref. UOOU-00179 / 19-23

CORRECTIVE ACTION

Chairwoman of the Office for Personal Data Protection as the competent administrative body pursuant to Section 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided pursuant to § 70 of the Administrative Procedure Code as follows:

In the statement of the decision of the Chairwoman of the Office for Personal Data Protection ref. UOOU-00179 / 19-19 of 20 December 2019, the written copy of the decision and the word shall be corrected

"Decision of the Office for Personal Data Protection ref. UOOU-01096 / 19-10 of 13 May 2019 "are replaced by the words" Decision of the Office for Personal Data Protection ref. UOOU-00179 / 19-9 of 14 May 2019 '.

Justification

In the operative part of the decision, the administrative body made a writing error by incorrectly marking the canceled ones decision. The decision originally issued does not concern the present case, given the context the whole decision, including its justification, as well as inclusion in the file file. stamp UOOU-00179/19, it is clear that this is a manifest error of writing in the decision

within the meaning of § 70 of the Administrative Procedure Code.

As the correction concerns the operative part of the decision, the administrative body decided on it as it is

stated in the operative part of this corrective decision.

Lessons learned:

In accordance with § 152 paragraph 1 of the Administrative Procedure Code, the chairwoman of the Office for Protection

personal data against this decision within 15 days of

delivery of the decision to the President of the Office for Personal Data Protection.

Prague, February 27, 2020

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)