

9. 8. 2019 - The Office for Personal Data Protection applied for the first time a new provision of the Personal Data Processing Act (§ 62 para. 5 of Act No. 110/2019 Coll.), According to which an administrative penalty cannot be imposed on a public authority and a public entity, although the law has been violated. It was an offense committed by the Ministry in connection with the processing of personal data in the population register and an offense committed by the city. In both cases, the Office had to refrain from imposing a fine, as the new law had already entered into force. The aim of the first inspection was to verify compliance with the obligations of the Ministry of the Interior as the administrator of personal data processed in the population register. In conclusion, the Ministry of the Interior allowed a total of 7,064 unauthorized access to the population register in connection with the agenda concerning the granting of authorization under the Act on the Verification and Recognition of Further Education Results. Furthermore, it allowed a total of 88,491 accesses to data in the population register to a greater extent than stipulated by the Basic Registers Act and within the system settings of the population register allowed executors access to personal data of all so-called tied persons, without the possibility of distinguishing the legitimacy of the request. Thus, the Ministry of the Interior, as the controller of personal data, did not take sufficient measures to prevent unauthorized or accidental access to personal data in the population register. In view of these serious findings, the Office initiated infringement proceedings against the Ministry of the Interior. Subsequently, the Ministry of the Interior was found guilty of committing an offense (Section 45 (1) (h) of Act No. 101/2000 Coll.) For failing to take or implement measures to ensure the security of personal data processing, thereby violating the statutory obligation, a fine of CZK 1.1 million was imposed. Based on the filed appeal, the appellate body agreed with the conclusion that the Ministry of the Interior, as the administrator, is responsible for the unauthorized disclosure of personal data. However, due to the fact that in the meantime the Personal Data Processing Act came into force on April 24, 2019, the Office was forced to refrain from imposing a fine. The Office proceeded similarly in the case of Uherský Brod. The city also stated the personal data of a specific notifier in the calls for payment of the fine pursuant to the Road Traffic Act (Section 125h para. 1), which were sent to hundreds of alleged offenders in the first quarter of 2017. In addition, he originally submitted the decisive documents to the Police of the Czech Republic, not to the town of Uherský Brod. The Office qualified such conduct as a breach of the obligation to process personal data only in accordance with the purpose for which they were collected (§ 5 para. 1 letter f) of Act No 101/2000 Coll.) And thus also as committing an offense (§ 45 para. 1 letter c) of Act No. 101/2000 Coll.), For which a fine of CZK 12,000 was imposed on Uherský Brod. This decision was also challenged by an appeal with which the Office, as the appellate body, did not agree, but was nevertheless forced to refrain

from imposing this fine as well. In this context, the Office states that in its decision-making activities it is bound by the applicable legislation, represented primarily by the General Data Protection Regulation (GDPR). However, the Personal Data Processing Act, the provisions of which § 62 (5), issued to adapt the General Regulation, also requires the Office to refrain from imposing an administrative penalty in the case of public authorities and public entities established in a given Member State. As follows from the above, the Office lost the possibility of imposing fines on public authorities and public entities, such as ministries, various administrative authorities, cities or municipalities, for personal data protection offenses. Although the Office is fully aware of the fact that the solution chosen by the legislator establishes a different position of different groups of controllers and processors of personal data, it is fully bound by law in its decision-making activities. However, it may continue to impose remedial measures on public authorities and public bodies.

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