OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-03469 / 18-19

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10
and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 6 June 2019
taking into account § 2 paragraph 1 of Act No. 250/2016 Coll., on liability for misdemeanors and proceedings on them
and § 62 para. 5 and § 66 para. 5 of Act No. 110/2019 Coll., on the processing of personal data pursuant to
provisions of § 152 par. 6 let. a) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-03469 / 18-10 of 18 May 2018
on the basis of the dissolution of the accused,
based
, ('the accused') of 1 June 2018,
changes so
that point II. The operative part of the contested decision is worded as follows:

„II. whereas the imposition of an administrative penalty is waived ';

and point III. The operative part of the contested decision is worded as follows:

„III. and according to § 95 paragraph 1 of Act No. 250/2016 Coll. it is required to reimburse the costs
proceedings in the amount of CZK 1,000, payable within 30 days from the date of entry into force of this decision
cashless transfer to an account maintained with the CNB, No. 19-5825001 / 0710, variable symbol
ID number of the accused, constant symbol 1148 “;

and the remainder of the contested decision is upheld.

Justification

Administrative proceedings for suspicion of committing an offense pursuant to § 45 para. h) of the Act
No. 101/2000 Coll., in connection with the processing of personal data in the population register (hereinafter referred to as
"ROB"), was initiated by an order of the Office for Personal Data Protection (hereinafter "the Office"),
Ref. UOOU-03469 / 18-3, which was delivered to the accused on 11 April 2018 and which it was
a fine of CZK 1,100,000 was imposed on the accused for committing an offense pursuant to Section 45 (1)

letter h), as he did not take measures to ensure the processing of personal data and thus violated § 13
paragraph 1 of Act No. 101/2000 Coll.
The basis for issuing the order was a report on the inspection ref. UOOU-07556 / 17-43 of 15 February
2018, acquired pursuant to Act No. 101/2000 Coll. and Act No. 255/2012 Coll., on control (control
Rules), the Office Inspector Mgr. and Mgr. Božena Čajková and the file material collected
as part of the inspection carried out on the accused from 8 August 2017 to 2 February 2018 on the basis of
The Office's inspection plan for 2017. The subject of the inspection was compliance with obligations
accused
as a controller of personal data processed in ROB, established by law
No. 111/2009 Coll., on basic registers, as amended, with a focus
to secure the processed personal data. The audit also focused on progress
of the accused and the measures taken by him after the previous inspection of the Office carried out during the period
from 28 January 2015 to 31 August 2015, at the end of which a violation of Section 13 (1) was found
Act No. 101/2000 Coll. unauthorized entities have access to personal data
in ROB. The following three suggestions (complaints) received by the Office were also included in the inspection
in the period from 11 February to 31 July 2017 and the content of which was related to the subject of the inspection.
These suggestions concerned the perception of personal data in ROB by the city
related
with elections, viewing the personal data of the statutory body
by the city

and access to personal data in ROB court

executor. The inspecting inspector concluded in the inspection report that the accused

violated the provisions of § 13 par. 1 and § 10 of Act No. 101/2000 Coll., the file was therefore transferred

to conduct administrative proceedings.

The accused filed an objection against the order, delivered to the Office on 18 April 2018. In accordance with § 150

paragraph 3 of the Administrative Procedure Code, the order was canceled by the filed opposition and the administrative body

of the first instance

continued the administrative proceedings. Subsequently, on May 18, 2018, the administrative body issued the first

degree of decision, ref. UOOU-03469 / 18-10, by which the accused was again found guilty

from committing an offense according to § 45 par. 1 let. h) of Act No. 101/2000 Coll., as he did not adopt or

has not taken measures to ensure the security of the processing of personal data. By this action

the accused violated the obligation stipulated in § 13 par. 1 of Act No. 101/2000 Coll., ie the obligation

take measures to prevent unauthorized or accidental access

to personal data, to their change, destruction or loss, unauthorized transfers, to their other

unauthorized processing, as well as other misuse of personal data, for which he was

§ 35 letter b) of Act No. 250/2016 Coll. and in accordance with § 45 paragraph 3 of Act No. 101/2000 Coll. saved

a fine of CZK 1,100,000.

Against the above-mentioned decision of the administrative body of the first instance (hereinafter referred to as the "contested

decision "), the accused filed an appeal on 1 June 2018 via the data box,

who argues that the Office's action is surprising and disproportionate, as if

these are the conclusions reached, as well as the amount of the fine imposed.

With regard to the amount of the fine imposed, the accused states that, in his opinion, it does not correspond to a stable one

practice of the Office in similar cases, and is also higher in comparison with other victims so far

(alleged) mistakes of the accused. Here, the accused refers to the chairwoman's decision

Office of 28 January 2016, Ref. UOOU-10090 / 15-15. The accused further states that the Office

does not take into account that all deficiencies were already present before the administrative procedure

removed and rectified and that the fine imposed is also in breach of the proclaimed new one
policy of the Office as a primarily educational body, not a punitive one. According to the accused
the Office itself undertook to provide its own contract concluded with the Administration of Basic Registers

expertise for the purpose of rectifying deficiencies without doing so (instead, it now imposes
fine for shortcomings which he should have noticed in time and thus prevent breaches of personal protection
data). The protection of personal reference data stored in the basic registers has according to
The Office, as the administrator of the ORG Information System, also held the accused, but he was in this position
idle. Furthermore, according to the accused, the Office was also inactive from the position of a member of the Council of Basic
Registers
(did not educate, did not draw attention to shortcomings, did not fulfill his contractual or legal obligations;
until now he punishes ex post for mistakes for which he himself shares responsibility).
The accused therefore requests a substantial reduction of the fine imposed in the light of the above,
(if the President of the Office maintains that sanction is still necessary), to the extent that
that the fine corresponds both to all the circumstances of the case and to the legitimate expectations of the accused.
Furthermore, the accused considers that the act is not sufficiently precisely and unmistakably defined in such a way that
so that the principle of ne bis in idem cannot be infringed in the future, which it further elaborates as follows:
In the statement I. letter a) and b) of the contested decision is generally written about granting access, no
however, it is clear whether there are any other approaches that are not included here. Accused here
calls for the statement to be changed to "a total of x approaches". It is then vaguely according to the accused
the statement under letter (c) where the wording of the undetected number of cases is used
and it is not defined what specific data should have been made available. This fact has an impact
on the seriousness of the act, ie if only one case of unjustified was reliably identified
approach, only this one approach can be stated in the statement. Following this fact has
according to the accused, the amount of the fine may also be unreviewable.
On the statement of I. letter (b) of the contested decision, the accused further claims that he is not liable

for service

, as the administrator of the ISZR is the Administration of Basic Registers, which is a separate one

an administrative authority that is subordinate to the accused but is not part of it.

The accused also stated in the appeal that the administrative body of the first instance did not settle sufficiently

both with his objection of unreasonably short time-limits for the preparation of the defense and with his own

share in the ascertained state of affairs. According to the accused, it is also missing in the contested decision

evaluations of the evidence which follow from them are not given by the administrative authority of the first instance

the criteria for choosing the type and amount of the sentence are not clear.

The next part of the appeal concerns the applicable and applied law of misdemeanor law. Later

the adjustment shall be applied if it is more favorable to the offender. According to the accused, this is not the case, which he

has

result from the overall tightening of the offense and the adjustment of the length of the limitation period.

The accused also stated that the argument by the provision of § 112 paragraph 2 of Act No. 250/2016 Coll. not possible

apply as it is an unconstitutional provision. At the same time, the accused is of the opinion that administrative

the first-instance body has chosen more favorable legislation for it, which allows for retroactive sanctions

for the offense, when he is allegedly guided by an attempt to punish the accused as severely as possible and to impose them

the highest possible fines.

The accused further commits an offense committed by him, stating that for its duration and continuation

there would have to be intent at the outset, hence conscious active action that cannot be talked about,

if the accused proceeds on the basis of the law.

In conclusion, the accused proposes to return the case for a new hearing, or at least to change it

the contested decision (by revising the operative part) and revise the fine.

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

preceded its publication, and came to the following conclusions.

In particular, the appellate body found that the defendant was materially accused in large part

reiterates the arguments he has already made in his previous statements to the Office.

As regards the accused's objection of insufficient time to prepare a defense,

given the complexity of the case and the fact that the sanction proceedings are dealt with by other authorized officials

than those involved in the inspection, the appellate body shall state that the period specified by the administrative body

first instance to the accused to comment on the grounds for the decision, does indeed appear to be

relatively short. On the other hand, it is necessary to take into account the fact that although they were all

violation of § 13 paragraph 1 of Act No. 101/2000 Coll. in the operative part of the contested decision

mentioned in the audit findings in the inspection report, charged against those findings

did not object. He objected only to the text concerning the opinion of the inspectors

on the possible improvement of the current practice within the framework of the audit finding No. 4, and the inspecting this

objection

the inspector complied. From the conclusion of the inspection, the accused was able to deduce the extent of his

charge. The argument concerning the insufficient expertise of the persons in the control procedure was according to

the opinion of the Appellate Body has already been sufficiently rebutted in the statement of reasons for the contested decision;

where it is stated that there can be no doubt about the sufficient legal and professional erudition of persons

present during the inspection acting on behalf of the inspected person. These people were

at the oral hearing Mgr. Karel Bačkovský, Head of the Security and Legal Department,

JUDr. Zdeněk Němec, Director of the Administrative Activities Department and JUDr. Juraj Martoník, chief methodologist

for the protection of personal data.

The defendant's objection that the Office is not fulfilling its contract obligations arising from the contract concluded

with the Administration of Basic Registers, as it does not ensure the protection of personal reference data

in the registers, the appellate body states, the Office is on the basis of the provisions of § 11 par. a) and b)

Act No. 111/2009 Coll., on basic registers, as amended, by the administrator

public administration information system (IS ORG), the purpose of which is to support the system

protection of personal data by replacing existing uses

birth number as a universal identifier of a natural person by a system of insignificant

identifiers. The Office therefore only ensures the anonymisation of communication between individual registers,

from which no liability can be inferred for the issue of personal data. The administrator is responsible for this issue

relevant registers. In the case of ROB, this administrator is, according to § 20 paragraph 1 of Act No. 111/2009 Coll.,

on Basic Registers, Ministry of the Interior.

Another argument of the accused concerns the reading of reference data from the ROB through inspection

to the ROS (Register of Persons, whose administrator is the CZSO) through the service

“)

to a greater extent than stipulated by Act No. 111/2009 Coll. Through this service was

approaches in this range. The defendant's objection that he is responsible

allowed

, which is a basic external communication interface service

entity for the operation of the service

registers (it also includes the

) Management of basic registers,

the appellate body refers to the statement of the accused himself of 9 May 2018, (p. 3

penultimate paragraph), which states „

(hereinafter "

“. The accused as an administrator then sets the parameters of the service, and therefore had

make restrictions on the data provided so that their scope meets the requirements

stipulated by Act No. 111/2009 Coll.

Regarding unauthorized access by public authorities to ROB data within the agenda

the accused refers to the fact that until 31 December 2016 he acted in accordance with § 54

paragraph 4 of Act No. 111/2009 Coll., on basic registers, according to which if the accused finds

in announcing the agenda shortcomings, invite the agenda announcer to eliminate them, giving him

provide a reasonable period of time for this. In the invitation, they shall inform the notifier of any shortcomings in the notification

agenda with reference to specific provisions of this law. However, this is

According to the Appellate Body, it was clear that the defendant should have assessed the compliance of the agenda

before the actual registration of the agenda. This can finally be deduced from § 54 para. 3 of the Act

No. 111/2009 Coll. (as amended until 31 December 2016), ie that if the accused does not find it

shortcomings in the announcement of the agenda, will register the agenda. The accused should not judge

not only the formal side of reporting the agenda, but also its content and verify the statement of the announcer.

As stated in the grounds of the decision of the administrative body of first instance, unjustified

the approaches were caused by incorrect system settings of the ROB administrator,

by which he is accused. The system setting correction was not bound in this case

to any legislative action taken by the accused.

The accused further believes that he did not err in access to executors' personal data, the so-called

bound persons, as in his opinion the scope of the data made available was justified. He argues

the provisions of Section 33a of Act No. 120/2001 Coll., on Bailiffs and Enforcement Activities

(Execution Rules), which stipulates the scope of data provided to the accused and the Police of the Czech Republic

executors. It is true that the bailiff is indeed entitled to use this data

to carry out the execution and is obliged to use the data for the explicitly stated purposes.

In this case, however, the bailiffs were given access to everyone's personal data

bound persons, and therefore also those whose data they did not need to carry out the execution,

they could not influence the fact by choosing a specific bound person. He was a court in this case

executed by the executor through the service

which is called

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therefore, it was an error in setting up the service, which did not allow the viewing executor

make a selection of specific tied persons. Appropriate service settings were mandatory

accused, because as the ROB administrator according to § 20 paragraph 1 of Act No. 111/2009 Coll. is responsible

for setting up the system, including access to data in the Agenda Information System

(AISEO). The appellate body therefore agrees with the conclusion of the administrative body of the first instance,
that the accused is in this case responsible for the unauthorized disclosure of personal data
to a greater extent than was necessary for the viewer's purpose.
As regards the applicable law in the field of criminal law, the Appellate Body states that
that in none of the assessed partial acts (not attacks, because they are individual
partial offenses under an ongoing offense, not an ongoing offense) would be time-barred
regardless of the legislation used. According to the provisions of § 46 paragraph 3 of the Act
No. 101/2000 Coll., effective until 30 June 2017, liability of a legal person for an administrative offense
expires if the administrative body has not commenced proceedings against it within 1 year from the day it became aware of it,
however, no later than 3 years from the date on which it was committed, by committing to ongoing administrative
offenses means completing / committing the last partial act. They were the last in this case
partial acts for individual acts fulfilling the factual substance according to § 45 par. 1 let. h)
Act No. 101/2000 Coll. committed on 29 February 2016, 30 December 2016 and 8 August 2017, respectively

administrative proceedings concerning the commission of these acts were initiated by order of 11 April 2018. It is
Thus, it is evident that the liability of a legal person for a given offense would be under previous legal
adjustments have not expired. According to the provisions of § 29 letter a) of Act No. 250/2016 Coll., on liability for
offenses and proceedings concerning them, effective from 1 July 2017, liability for the offense ceases
upon expiry of the limitation period, the limitation period according to § 30 letter b) the above-cited law
for a misdemeanor for which the law sets rates of fines, the upper limit of which is at least CZK 100,000
(in the given case, this limit was in accordance with the provisions of Section 45, Paragraph 3 of Act No. 101/2000 Coll.
CZK 5,000,000) 3 years. The period of cessation of liability for the offense is therefore according to both of the above
legislation is the same. Even if the question of intertemporal effects were to assess the case
the Office could not overlook the fact that the case law of the administrative courts has not yet occurred
to the conclusion on the unconstitutionality of the provisions of Section 112, Paragraph 2 of Act No. 250/2016 Coll., on Liability
for offenses and proceedings concerning them. After all, the Ministry of the Interior itself in its publication "Guide

Act No. 250/2016 Coll., on liability for misdemeanors and proceedings on them (2nd amended version,

updated to 19 January 2018) "[at http://www.mvcr.cz in subsection" Methodological

aids to Act No. 250/2016 Coll., on Liability for Misdemeanors and Proceedings Concerning Them ”]

to the conclusion on the unconstitutionality of the given provision and refers to the conclusion of the Constitutional Court ruling

from

on 21 December 1993, file no. Pl. ÚS 19/93 that Article 40 (6) of the Charter of Fundamental Rights and Freedoms

deals primarily with which crimes can be prosecuted (ie those defined by law

at the time the act was committed) and does not address the question of how long these acts can be prosecuted.

The defendant 's argument that the condition for a continuing offense must be the intention to provoke

illegal state and maintain it, the appellate body notes that this condition of the provisions of § 8

of the Misdemeanor Act governing a continuing misdemeanor. A sign of a continuing offense

is “the conduct (note, not intentional) of the perpetrator consisting in summoning and following

maintaining the offense or the offender 's conduct to maintain the offense

a condition which was not caused by the offender ". It can therefore be stated that the allegations of the accused

is not based on truth. After all, if that were the case, there would be an absurd situation

when offenses committed through negligence, omissions, or misdemeanors

formulated as a liability for consequence, were not punishable at all.

As regards the objection concerning access to punishment and the sanction imposed, the appellate body states that the

administrative body

the level of the sanction duly justified. In particular, he took it into account when saving it

to the nature and gravity of the offense, which is heightened above all by the fact that he is accused

professional in the field and should therefore be the guarantor of the proper performance of his duties

entrusted by law. As another fact increasing the seriousness of the offense, the administrative body

The first instance found a significant number of data subjects and a long time interval

offense committed. The accused argues that the amount of the sanction imposed does not correspond to established practice

Office in similar cases, as it is higher compared to other victims

fault of the accused. In this context, the accused refers to the President's decision

Office of 28.

January 2016, Ref. UOOU-10090 / 15-15, which concerned the possibility

unauthorized access to personal data in basic public registers

institutions - Czech Radio and Czech Television. Although this was also the case

for a misdemeanor according to § 45 par. 1 let. h) of Act No. 101/2000 Coll., the Appellate Body emphasizes

that the two cases cannot be fully compared, as the number of personal data subjects concerned was

in this case lower and the time of committing the offense significantly shorter. These facts

are, of course, reflected in the amount of the sanction imposed. (NB: this Decision is the President of the Office

reduced the originally imposed fine of CZK 700,000 to CZK 500,000, with the violation

covered the total

personal data subjects). Appellate body in this regard

Notes that, although the administration of first instance gave sufficient reasons for the amount of the sanction imposed,

which was imposed within the statutory limit, the fact that

that in the event of a breach of the obligation set out in Section 13, Paragraph 1 of Act No. 101/2000 Coll., in connection with

with agenda

, ie granting authorization under Act No. 176/2006 Coll., on the recognition of results

further education, there was a correction by the accused, even before the start of the inspection

management by the Office.

However, the appellate body states in that regard that it is bound in its decision-making activity

legislation in force, represented in particular by a regulation of the European Parliament and of the Council

(EU) 2016/679 of 27 April 2016 on the protection of individuals with regard to processing

personal data and on the free movement of such data and repealing Directive 95/46 / EC

"General Regulation") and further Act No. 110/2019 Coll., On the processing of personal data. According to

provisions of Section 66, Paragraph 5 of Act No. 110/2019 Coll. then “proceedings initiated by law

No. 101/2000 Coll., which was not definitively terminated before the date of entry into force of this

of the Act will be completed in accordance with Act No. 101/2000 Coll. ", which must be related to this

case. At the same time, however, it is necessary to recall Article 83 (7) of the General Regulation, according to which

"Každý Each Member State may lay down rules concerning whether and to what extent it is possible

impose administrative fines on public authorities and public bodies ', in accordance with this provision

§ 62 paragraph 5 of Act No. 110/2019 Coll. He orders the Office to refrain from imposing an administrative penalty

also in the case of controllers and processors referred to in Article 83 (7) of the General Regulation.

The provisions of Section 2 of Act No. 250/2016 Coll., On Liability for Misdemeanors and Proceedings

that the liability for the offense is assessed in accordance with the law in force at the time of the offense

offense; according to a later law, it is assessed only if it is for the offender

more favorable. As the accused committed the act in question as an administrator in the capacity of an authority

public authorities, it is necessary to apply the more favorable legislation that it represents

provisions of Section 62, Paragraph 5 of Act No. 110/2019 Coll.

On the basis of all the above facts, he therefore decided as stated in the statement

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 6, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman