

OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00BUE88 *

Ref. UOOU-10191 / 13-43

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., The Administrative Procedure Code decided on March 26, 2018 according to provisions of § 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. a) of Act No. 500/2004 Coll.,

Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-10191 / 13-28 of 26 March 2014 is canceled and the proceedings are stopped.

Justification

The Office for Personal Data Protection (hereinafter "the Office") considered that the party

XXXXXX (hereinafter

only "party to the proceedings"), in connection with the processing of personal data

through a camera system, as a controller of personal data according to § 4 letter j) of the Act

No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, as unspecified published photos on XXXXXX at least until 5 December 2013

alleged perpetrators of the theft and published on the Internet address XXXXXX footage from the camera

system intercepting alleged perpetrators of theft. Thus, the party to the proceedings should have breached the obligation stipulated in § 5 par. 1 let. f) of Act No. 101/2000 Coll., ie the obligation to process personal

data only in accordance with the purpose for which they were collected and for other purposes only within the limits

provisions of § 3 paragraph 6 of this Act or if the data subject has given his consent and committed administrative offense according to § 45 par. 1 let. c) of Act No. 101/2000 Coll. By decision of the Office ref. UOOU-10191 / 13-28 of 26 March 2014, a fine was therefore imposed on the party CZK 100,000.

The dissolution of the party to the proceedings was a decision of the Chairman of the Office ref. UOOU-10191 / 13-33 of 27 May 2014 ('the decision'), but the decision was subsequently rejected by the party challenged in an administrative action. Judgment of the Municipal Court in Prague Ref. 8A 117 / 2014-46-52 of 1/4

30 January 2018 (hereinafter referred to as the "judgment"), against which neither the Office nor any other entitled person filed cassation complaint, then the decision was annulled and the case was returned to the Office for further proceedings.

In the grounds of the judgment, the Municipal Court in Prague (hereinafter referred to as the "Municipal Court") stated that it was administrative

the authority must justify in a verifiable manner the considerations on which it was conducted, as in own proof, as well as in the interpretation of legal concepts and the overall evaluation addressed legal issues, the justification being individual and specific to the case.

If the administrative body decides, within the limits of the law permitted by reason, for a certain possibility, it should should duly justify its choice and is obliged, among other things, to ensure that the solution adopted is in accordance with public interest and to suit the specific circumstances of the case. However, this is how the Office neither the President of the Office acted in the opinion of the Municipal Court, as they did not take into account and they did not deal in more detail with the fact that there were two competing parties protected interests (respectively fundamental rights). The administrative bodies of both had a conflict between these rights degrees in deciding on an administrative offense to know and properly assess them so that they meet their own obligations in justifying a decision on administrative punishment. The administrative authorities therefore, according to In the opinion of the Municipal Court, they did not take due and explicit account of the protected interests involved in the case appear, although Act No. 101/2000 Coll. anticipates that, where necessary, they may be personal data are processed without the consent of the data subject. The city court did not deny that the Office

tried to respond to the party 's allegations concerning the need to protect it

the right to protection of property or the need to prevent crime, but at the same time in the opinion

The Municipal Court cannot find this reasoning sufficient. Lapidary general conclusion

administrative authority that the right to privacy prevails here because of the protection of their property

the plaintiff could have sought through the prosecuting authorities, he is not responsible

degree of interference with the rights of a party to the proceedings. Moreover, it does not even reflect the specifics of the

crime, which

should be committed in the case, especially the current possibilities of the injured party in the search for

perpetrators of the crime, or other options that would protect its property

or helped him compensate for the damage caused by the thefts. The city court, he said, not at all

does not take the view that the interest in detecting and punishing socially undesirable behavior must and

a priori outweigh the constitutionally guaranteed right to inviolability of the privacy of a person or

more generally its integrity. However, it is the administrative authority's responsibility to consider these circumstances and to

do so appropriately

to be taken into account in the statement of reasons for the decision issued, also with regard to the constitutional order

guaranteed protection of property. And a harsh statement that ignores the importance of interests is not enough

contrary to the right to privacy. This is especially necessary

assess the reason for the publication of the camera recording by a private person, ie whether it was watching

his legitimate, generally legitimate aim or, conversely, the purpose of publication was only

unjustifiably interfere with the rights of another (for example, in the case of a targeted invasion of privacy for

a situation where this would no longer be a necessary step to detect the perpetrator

activity, typically if it had already been caught). At the same time, it is necessary to consider whether disclosure

CCTV recording was the only possible way to achieve this goal, or whether

they also offered other options, less interfering in the legal sphere of other persons, which would, however, be capable

achieve the objective pursued. In this context, the administrative authorities have to assess the specific

circumstances of the case in light of the intensity of the need to publish a camera recording (e.g.

previous attacks on the acquirer's property, the actual purpose of use of the record, method of publication etc.) and the protection of the privacy of the person concerned. For the above reasons, the Municipal Court has arrived concludes that the contested decision is unreviewable for lack of reason and therefore set aside and remitted the case to the Office for further proceedings, without considering the merits of the other pleas.

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To that end, the appellate body, having thoroughly acquainted itself with the file, considers that In particular, it must be stated that the administrative procedure was conducted on the basis of a closer notice unidentified persons, none of the persons captured in the footage opposing the publication in no way. The appellate body then found its own footage to be very inconclusive, since capture either obviously unidentifiable or very difficult to identify persons and only in some cases can a certain defect in their actions be inferred. The shots are too do not affect the dignity of the data subjects. It should also be noted that the party concerned throughout the proceedings, he stated that only illustrative ones were published shots taken with the consent of individuals for the purpose of preventing fictitious crime customer theft, ie that these are not real shots of alleged perpetrators of theft. Tuto however, the Office, both in the proceedings at first instance and in the appeal proceedings, refused, but only on the basis of indirect indications. City court with the subject he did not explicitly agree with the Office's arguments, as he did not agree in this decision on this issue did not express.

It is therefore necessary to recall the fact that the shots can be perceived as illustrative, taken in de facto public spaces, with the aim of documenting the security of the building through a camera system, which can be seen as fulfilling a legitimate purpose in accordance with § 5 par. 2 let. e) of Act No. 101/2000 Coll. Although some scanned people report signs of suspicious behavior, but this is not so intense that it could be perceived as guide for the Police of the Czech Republic. On the other hand, this publication could act as a kind prevention, resp. a tool to deter possible (petty) thefts. To the fact that it is

the sentence after the semicolon of the last quoted provision is fulfilled (ie that it cannot be detected disproportionate disruption of private and personal life), as evidenced by the absence already mentioned complaints from data subjects. It is also very important that the participant in the proceedings in question camera records in the course of the proceedings conducted by the Office, and it also appears for this reason the sanction itself is disproportionately high.

Furthermore, in particular from the opinion of the Office published on 3 October 2017 on the so-called case ekolo.cz

(see [https://www.uoou.cz/uoou-by-pokutu-v-pripadu-ekolo-cz-znovu-neudelil/d-](https://www.uoou.cz/uoou-by-pokutu-v-pripadu-ekolo-cz-znovu-neudelil/d-27149)

27149) it is clear that the Office intends to deal with similar cases in such a way that they are always thorough

assess the circumstances of each individual case and that the interpretation of Act No. 101/2000 Coll.

the principle of proportionality is respected. In the judgment in question, the Municipal Court, as it was

as mentioned above, emphasizes the same, with the proviso that a specific case should take place

to assess the conflict between the right to privacy of the recorded person and the constitutionally

guaranteed rights of the person who made and published the alert in order to protect his

ownership. Conflicts of these rights should be made by the administrative authorities of both levels in decision-making

know about the administrative offense in question and properly assess it in such a way that they meet their own

obligations in justifying a decision on administrative punishment. City Court in particular

pointed out that the described conflict of protected interests is also foreseen by § 5 para. e) of the Act

No. 101/2000 Coll., according to which personal data may be processed even without the consent of the data subject,

where necessary to protect the rights and legally protected interests of the administrator, and

a strict statement on the impossibility of applying that provision is not sufficient. Responsibilities

administrative authority is to properly reflect this conflict and to settle it properly in its decision,

not only to state a breach of the legal obligations set out in the Protection Act

personal data.

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On the basis of the above, the Appellate Body then concluded that the decisions in question

The Office was not sufficiently detailed in terms of justification, it was not built on thorough assessment of the individual circumstances of the case and the test was not carried out to a sufficient degree proportionality, as required by the judgment of the Municipal Court and also referred to in the opinion Office of 3 October 2017 concerning the so-called ekolo.cz case. At the same time, however, he is forced to state that, in the current state of affairs, it is generally very difficult to argue further deepen and, if so, certainly not in the direction confirming the administrative tort, but only in the opposite sense. Moreover, the degree of seriousness of the conduct of the party to the proceedings is crucial in this way reduces the very fact of a significant time lag from the publication of the subject slides.

In the light of all the above, the Appellate Body ruled as indicated in the operative part of this decision, which, however, he considers it necessary to emphasize in particular does not imply a general tendency on the part of the Office to publish photographs or records of camera system containing personal data. At the same time, the appellate body found that this was the case the original appeal is not satisfied and neither party can be harmed.

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.

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JUDr. Ivana Janů

chairwoman

Prague, March 26, 2018