OFFICE FOR PERSONAL DATA PROTECTION

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Ref. VER-2821 / 09-54

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29

and Section 32 of Act No. 101/2000 Coll., on the Protection of Personal Data and on the Amendment of Certain Acts and

pursuant to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code decided on 1 June 2018

according to the provisions of § 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. a) of the Act

No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. VER-2821 / 09-34 of 21 May 2014

cancels and the proceedings are stopped.

Justification

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

based

('the party') in connection with the internet presentation

press release of 21 April 2009, as a controller of personal data pursuant to § 4 letter j)

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

from 21 April 2009 until at least 8 June 2009, without the consent of the data subjects, to

internet address

personal data

and

permanent residence

within the scope of the information

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. The team

should violate the obligation stipulated in § 5 paragraph 2 of Act No. 101/2000 Coll., ie the obligation

process personal data only with the consent of the data subjects and also the obligation set

in § 9 of Act No. 101/2000 Coll., ie the obligation to process sensitive data only if the subject

data gave explicit consent to the processing, thereby committing an administrative offense under § 45 para. 1

letter e) of Act No. 101/2000 Coll., as it processed personal data without the consent of the subjects

data outside the cases specified in the law, for which it was a decision of the administrative body

first degree ref. VER-2821 / 09-12 of 4 August 2009 imposed a fine of 10,000 CZK.

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Appeal against this decision by the President of the Office by his decision ref. VER-2821 / 09-21

of 22 September 2009. The party filed an action against the decision of the President of the Office

to the Municipal Court in Prague, which in her judgment no.

of 30 May 2013

rejected. However, following a subsequent appeal by a party, that judgment was set aside

by the judgment of the Supreme Administrative Court ref.

of 20 February 2014, namely

including both decisions of the Office, the case being returned to the Office for further proceedings.

In the grounds of the judgment the Supreme Administrative Court stated that the administrative body, ie

The Office did not state reasons in the statement of reasons for the contested decisions in the part relating to publication

data on

or

subject to appropriate proof in the proceedings whether the party acted as

personal data controller. The administrative proceedings did not rebut the party 's assertion that

due to his position as the employer of the said persons, he only had the data

on their permanent residence (with regard to the data on permanent residence, the party to the proceedings was their

administrator,

which he did not question), not the above data.

In the opinion of the Supreme Administrative Court, the administrative body violated the law by giving reasons

both decisions did not address the nature of the data on

possibly did not do so

proof. He stated that, without any further examination, it was an administrative body

presumed that these data are the subject of registration of the party to the proceedings as the employer

and as such are subject to the legislation of Act No. 101/2000 Coll. He sees another mistake

The Supreme Administrative Court stated that the administrative body did not deal with the arguments of the participant

the source of this data, ie whether the party obtained the data from the employee register, or

whether it was, for example, only information arising from the general awareness of the team at

workplace. If, as the Supreme Administrative Court stated, the party to the proceedings in question is personal

he obtained the data not from the title of personal data management, but, for example, from the title of shared knowledge

within the team at the workplace, it was possible to apply the institute of protection to such a case

personalities in civil court proceedings and not punishment for an administrative offense under the law

No. 101/2000 Coll.

The Supreme Administrative Court identified as superfluous parts of the reasoning of the decision of the administrative body,

which concerned the assessment of the fulfillment of the conditions for the application of § 5 para. e) of the Act

No. 101/2000 Coll., ie a provision enabling the processing of personal data without consent

the persons concerned, as it was not clear from the administrative authority whether

in this case it was a processing according to Act No. 101/2000 Coll.

The Supreme Administrative Court regarding the sanction of a party to the proceedings for an administrative offense in the part

concerning

disclosure of data on

stated that the decision

administrative body, in both stages, suffers from a lack of reasons, respectively. management suffers from absence

appropriate evidence. He stated that the administrative body should have been more thorough

in justification whether the indication of

has been processed

personal data, or subject to appropriate proof as to whether the party to the proceedings

due to the management of personnel and payroll of employees, he actually had the data

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(from October 14

2008) and follow - up

(as of April 15, 2009). He further stated that the administrative body

did not sufficiently assess the facts of the case, in particular whether they constituted a case

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mitigating or aggravating circumstance. He identified as a matter of fact the fact that

data on

was included in the press release in response to

allegations presented in Nova television 's broadcast regarding the inappropriate conduct of her

employee (for this he referred to the judgment of the Supreme Administrative Court No. 2 As 21 / 2011-166

of 25 March 2011) to shed light on that

He then stated that at least

the grounds on which the party considered necessary were to be settled

state why

He also noted

that the administration should pay more attention to the fact that

. In the opinion of the Supreme Administrative Court, the administrative body did not define the seriousness of the

administrative

tort in the light of the fact that the party to the proceedings violated the law (primarily or only) in relation to

publication of additional information that

. Also

He stated that he also lacked an assessment of the facts of the case regarding the participant's sanction

proceedings for an administrative offense in the part concerning the disclosure of data on

However, the following decision of the Office ref. VER-2821 / 09-34 of 21 May 2014 thereafter

confirmed by the decision of the President of the Office ref. VER-2821 / 09-44 of 12 August 2014 again

the proceedings of the party to the proceedings qualified as an administrative offense pursuant to § 45 para. e) of the Act

No. 101/2000 Coll. and for these reasons a fine of CZK 10,000 was imposed on him.

Based on the administrative action of the party to the proceedings, the Municipal Court in Prague in the judgment no.

of 28 February 2018 Decision of the President of the Office Ref. VER-2821 / 09-44 of

On 12 August 2014, it annulled and remitted the case to the Office for further proceedings. In the reasoning the Municipal

Court in Prague

in particular, he stated that the Office had not followed the instructions of the Supreme Administrative Court

in the judgment no.

of 20 February 2014, in particular, did not make the necessary

evidence and, in addition, re-substantiated its decision with arguments made by the Supreme Administrative Court

refused as unjustified.

To that end, the appellate body, having thoroughly acquainted itself with the file, considers that

It is necessary to recall, above all, that the administrative body of the first instance in the decision no. VER-

2821 / 09-34 of 21 May 2014 as part of the justification, except for the recapitulation of the previous one

procedure, dealt with the interpretation of the concepts of personal data and processing, concluding

that the processing of personal data on the Internet should also be considered as the processing of personal data

provided that, in the present case, the party to the proceedings is an administrator within the meaning of

§ 4 letter j) of Act No. 101/2000 Coll. It is further stated here that no evidence has been taken

requested by the Supreme Administrative Court, as the party's statement was unequivocally

according to which personal data on

they were not part of the personnel files kept by the party to the proceedings and were therefore

gained from general awareness in the workplace. Subsequently, with reference to the judgment of the Court Court of Justice in Case C-101/01 (Lindqvist v. Sweden) and to note that the judgment of the Supreme Court Administrative Court ref. As 21 / 2011-166 of 25 March 2011 is relevant only in the determination sanctions, inferred that the controller lacks a legal title for the relevant disclosure of personal data. In the end, the amount of the sanction is justified quite extensively. With this argument made subsequently, in principle, identified the decision no. VER-2821 / 09-44 of 12 August 2012.

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The Appellate Body therefore found that the Office had deepened its reasoning regarding the interpretation of the law regulations, justifying why the party to the proceedings is in the position of personal data controller and further more thoroughly justified the amount of the sanction. These conclusions can generally be accepted, however at the same time, it is necessary to state the resignation from the basic requirement expressed by the Supreme Administrative court, ie to determine the source of the relevant personal data. In this context, it was only presumed that they were obtained on the basis of general awareness in the workplace, resp. it was not the party 's assertion that the information on

. Here, however, it is necessary to recall the opinion expressed by the Supreme Administrative court, according to which in this case the sanction for an administrative offense under the law would be excluded No. 101/2000 Coll., however, the matter could be resolved within the institute of personality protection according to of the Civil Code. With this view of the Supreme Administrative Court, it would be possible to argue in fact, but the Office is, on the basis of § 78 para. 5 of the Code of Administrative Procedure, bound. Moreover, in the absence of such evidence, the application of the law is not excluded title according to § 5 par. 2 let. e) of Act No. 101/2000 Coll. If it is the source of information itself data subject, the provision after the semicolon § 5 para. e) of Act No. 101/2000 Coll. requiring the protection of the personal and private life of the data subject to be interpreted more in favor of protection the legitimate interests of the administrator. This also distinguishes the case from the judgment of the Court of Justice EU in Case C-101/01 (Lindqvist v. Sweden), where proactive disclosure took place data from a relatively closed community environment, which was found to be unsafe. Similarly,

Although a violation of Act No. 101/2000 Coll. had to be pronounced if it were proved that
personal data comes from records with limited access (employee records of the participant
proceedings, medical documentation, etc.), however, this situation did not occur. It is not the same
it is excluded that the processing of personal data published by the data subject in accordance with
with § 9 letter g) of Act No. 101/2000 Coll., resp. on the processing of personal data legitimately
published according to § 5 par. 2 let. d) of Act No. 101/2000 Coll. Absence of proof in this
direction thus represents an insufficiently ascertained factual state of affairs on the basis of which it is impossible to do so
no conclusions, in particular, the act in question cannot be classified as an administrative offense.
For those reasons, the appellate body ruled, as stated in the operative part of this decision.
At the same time, the appellate body found that the original appeal had been upheld in this way and could not
no damage may be caused to any of the parties to the proceedings. Alternatively, the matter could be returned
the administrative authority of the first instance in order to try to remedy the above-mentioned shortcomings,
however, with a gap of about nine years, the effectiveness of taking the required evidence
a priori it seems very negligible.
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 1, 2018
For correctness of execution:
official stamp imprint
JUDr. Ivana Janů, v. R.
chairwoman