OFFICE FOR PERSONAL DATA PROTECTION

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Ref. SPR-5638 / 09-94

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 and pursuant to § 52 paragraph 1 of Act No. 110/2019 Coll.,

on the processing of personal data, decided in accordance with the provisions of § 152 para. (a) in conjunction

with the provisions of § 152 para. 5 and § 90 para. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. SPR-5638 / 09-70 of 29 January 2015

is annulled and the case is returned to the administrative authority of the first instance for a new hearing.

Justification

Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. c), e) and f)

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

with the operation of the camera system was launched by notifications of the Office for Personal Protection

data (hereinafter referred to as the “Office”) on the day of delivery to the accused XXXXXX (hereinafter referred to as the “accused”), namely on

12 October 2009 and 2 December 2009. On 7 December 2009, the administrative body decided by resolution no.

SPR-5638 / 09-27 that the proceedings are joined in a joint procedure. The basis for the administrative proceedings was

inspection protocol No. INSP2-6246 / 08-15 of 16 June 2009, which was obtained

Inspector of the Office Ing. Jan Zapletal on the basis of an inspection carried out on the accused in

from 10 February 2009 to 15 June 2009, together with the file material obtained under

controls. The basis for initiating administrative proceedings was also the decision of the President of the Office on

objections to the inspection protocol No. INSP2-6246 / 08-19 of 11 September 2009.

On 1 February 2010, the administrative body of the first instance issued decision No. SPR-5638 / 09-34,

in which a violation of § 5 par. 1 let. d), § 5 para. 2 and § 11 para. 1 of the Act

No. 101/2000 Coll., which fulfilled the factual nature of the administrative offense under § 45 para. 1

letter c), e) and f) of Act No. 101/2000 Coll., for which a fine of

CZK 20,000 and the obligation to reimburse the costs of the proceedings in the amount of CZK 1,000. Against the above

decision, the accused filed an appeal on 18 February 2010, which was decided by the President of the Office as

appellate body by decision no. SPR-5638 / 09-49 of 28 April 2010. The contested decision

was specified in the statement part, resp. amended so that after the words: “§ 4 letter j) of the Act

No. 101/2000 Coll. ”, the words“ from 16 August 2008 to 15 June 2009 ”were inserted. The amount of the sanction remained

unchanged.

The accused filed an administrative action against the decision of the President of the Office with the Municipal Court in

Prague,

which, by judgment No. 5 A 166 / 2010-48 of 24 October 2014, the decision of the President of the Office

on decomposition ref. SPR-5638 / 09-49 of 28 April 2010 annulled and remitted the case to the Office for further proceedings.

The main substantive complaint was that the CCTV system was considered as a whole, while

in the opinion of the Municipal Court in Prague (hereinafter referred to as the “Municipal Court”), the Office should have dealt

with it

individually by each camera from the point of view of Act No. 101/2000 Coll.

This was followed by a new decision of the Chairman of the Office ref. SPR-5638 / 09-64 of 11 December 2014

on the above decomposition. By that decision, the contested decision,

5638 / 09-34 of 1 February 2010 was annulled and the case was remanded for an administrative hearing

first instance authority.

The administrative body of the first instance was the decision of Ref. SPR-5638 / 09-70 of 29 January

2015 again found a violation of § 5 para. d), § 5 para. 2 and § 11 para. 1 of Act No. 101/2000

Sb., Which fulfilled the factual nature of the administrative offense under § 45 para. c), e) and f)
Act No. 101/2000 Coll. Again, therefore, a fine of CZK 20,000 was imposed on the accused.
The accused committed the above administrative offenses as a controller of personal data in connection
with the operation of a camera system consisting of 7 cameras located at the entrance,
in the entrance hall, in the hall in front of the elevators, in the elevators, on the staircase to the cellar and on the external
facade
apartment building in the period from August 16, 2008 to June 15, 2009, by collecting personal
data of apartment dwellers through 5 cameras located at the entrance, in the entrance hall, in the hall
in front of the lifts and in the lifts, as well as the personal data of all persons concerned via 2 cameras
located on the exterior facade of the apartment building, which occupied the public space, including
entrance to the dentist's office and public space, including access to the second
hand, ie personal data that did not correspond to the specified purpose and to an excessive extent
to achieve the declared purpose of protecting the accused's property without consent
persons concerned (statement I.), by processing the personal data of the inhabitants of the dwellings through 5
cameras located at the entrance, in the entrance hall, in the hall in front of the elevators and in the elevators, and also personal
data of all affected persons through 2 cameras located on the exterior facade
apartment building, which occupied the public space, including the entrance to the office
dentist and public space, including entry into the second hand, without their consent
(statement II.) and by failing to provide the data subjects concerned, ie all moving persons
in the premises monitored by the accused's camera system, information on the operation
camera system to the extent required by law, when he only installed text labels
"The building is monitored by a camera system" at the entrance to the apartment building and "The building is
monitored by a camera system with recording, "XXXXXX" on the perimeter walls
of the House (statement III.).
On 12 February 2015, the accused filed an appeal against this decision, in which he asserted
objection of bias against external members of the appeal commission. The appeal was rejected

by decision of the Chairman of the Office ref. SPR-5638 / 09-78 of 30 March 2015 ('the contested decision')
decision "), which entered into force on 31 March 2015 and which the accused challenged in an action
in the city court.

The Municipal Court reviewed the contested decision in the scope of the pleas in law which, according to
provisions of § 75 paragraph 2 of Act No. 150/2002 Coll., the Code of Administrative Procedure, bound, including proceedings
which
its release preceded and reached the following conclusions.

First of all, the municipal court stated that it did not find a reasonable objection to the confusion of the respondent
decision, as it was issued in accordance with the provisions of § 152 para. b) of the Act
No. 500/2004 Coll., Administrative Procedure Code (note as amended at the time of issuing the decision).

The Municipal Court further stated that the plea of inadmissibility was also unfounded
of the contested decision, since it did not appear that there was any appeal
the President of the Office did not address the contested decision.

Regarding the position of the members of the appeal commission, the municipal court then referred to its judgment of
30 October 2012, File No. 6 A 146 / 2012-103, where he stated that if the Appeals Commission
of its advisory body, its members cannot be regarded as officials of the competent administrative body
the Office, which shall act and decide on the matter. The city court also did not find a reasonable objection
accused that those members of the appeals commission who were led as so-called external workers were
in fact, also the staff of the defendant and thus established an appeal commission in conflict
with § 152 paragraph 3 of Act No. 500/2004 Coll., Administrative Procedure Code.

The city court also addressed the question of whether for the accused of later effective legal
regulations does not result in more favorable legislation, in the context of a resolution of the enlarged Senate
Of the Supreme Administrative Court of 16 November 2016, No. 5 As 104 / 103-46 and came to the conclusion that
that Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection
natural persons with regard to the processing of personal data and on the free movement of such data,

effective May 25, 2018, is not more favorable to the accused.

The defendant's objection that seeking protection of the rights of persons related to processing

personal data should be left to the activity of the persons concerned, the Municipal Court

that this protection is provided independently of each other by private and public law.

On the merits, the city court then referred to the issue of making records

security cameras have already commented in their case law, from this case law

then the municipal court based its decision.

Městský stated in his verdict that he considered it indisputable to be accused by the acquisition and retention

collected and processed personal data of filmed persons. Urban

however, the court found a well-founded complaint in which the accused pointed out that in his case

the interest in property protection, security and health outweighs the need to protect privacy.

In the opinion of the municipal court, the Office incorrectly measured the accused's interest in the acquisition

camera system and favored only the interest in the privacy of individuals. The city court has arrived

to the view that the accused processed personal data in full accordance with the purpose for this

processing (ie to prevent and detect crime) and was authorized to do so

process personal data without the consent of the data subjects in the sense of the provisions of § 5 para. 2

letter e) of Act No. 101/2000 Coll. By his actions, he did not commit administrative offenses in accordance with the provisions

§ 45 par. 1 let. c) and e) of Act No. 101/2000 Coll. The action was therefore upheld on that point as

justified.

The city court further justified its decision by stating that the accused declared the purpose of the acquisition

camera system, which was an interest in the protection of property, health and safety, was established

on a real threat, not a purely hypothetical threat. In this case, it was

on threat prevention inspired by real events - previous unfortunate ones

experience with damage to the facade, finding syringes, fears of attacks in the elevator -

these concerns were documented in the administrative file by criminal notices from 2006, 2007 (e.g.

about breaking into common areas - on the ground floor of the house, in a second hand shop), photographs about damage to the facade and the finding of syringes under the stairs. According to the city court, it is not possible a priori predict where the next attack will go, as vandalism can hurt theoretically every part of the house, threats to safety and health (eg violence against people) he can also come in any part of the house, the accused therefore, in the opinion of the municipal court, it was in these spaces at the entrance to the building that he logically placed the cameras. Common areas at the same time they were separated by individual rooms and their monitoring was not possible in the opinion city court to achieve a smaller number of cameras. The city court did not agree with the opinion of the Office that constant monitoring of access routes and common areas occurred to collect personal data not suitable for the intended purpose and to the extent not necessary to fulfill the intended purpose. There was therefore no violation of the provisions of Section 5 (1) letter d) of Act No. 101/2000 Coll.

In this context, the Municipal Court also pointed out that the common space had been monitored, which by default does not serve to live and satisfy personal needs and must therefore be taken into account with the fact that more people will meet there at once. Camera system monitoring the crucial input part according to the city court, the interior was set up effectively when shooting the necessary part the space behind the entrance to the building, which by its nature could no longer be secured otherwise. Therefore, the camera settings did not exceed an area that would be disproportionate to the achievement objectives (protection of property and bodily integrity). Scanning the narrower area would miss its purpose, while the city court stated that in the light of the records viewed, it could not even imagine how smaller monitoring of common areas could be even more privacy-friendly people while being even more effective. According to the city court, the question is also to what extent systematic attacks on people's sense of privacy have been undermined their property as a result of e.g. inefficient asset protection system. The criteria of necessity and comparison are therefore in the view of the Municipal Court was also complied with in the case of the accused.

In summary, the Municipal Court also found that the requirement to respect Article 4 was met
paragraph 4 of the Charter, which consists in examining the essence and meaning of a restricted fundamental right. My
the technical solution, approach and other circumstances mentioned above were operated by the accused
its camera system for a specified, legitimate, predictable purpose, in a manner
which did not unduly interfere with the fundamental rights and freedoms of the persons being shot. Upon reaching
thus protected both the substance and the meaning of the rights (Articles 7 (1) and 10 (2) and (3) of the Charter).
Regarding the other objection of the accused that he complied with the requirement of § 11 par. 1 of the Act
No. 101/2000 Coll. and thus did not commit an administrative offense of non-compliance with the information obligation,
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the Municipal Court stated that in its judgment of 24 October 2014, No. 5 A 166/2010 -
48 did not find that this obligation was fulfilled. The presence of a monitoring system were
newcomers alerted to the corners of the house, to the door at the entrance to the common areas of the house and at
entrance to the area in front of the elevators. According to the city court, the arrivals were generally alerted
on the presence of a camera system, but they were not alerted directly to where the individual
cameras are located. “Ordinary newcomers - especially indoors - if alone
he did not look around and look for the location of the cameras, he did not have to know where these cameras were and in
which
the moment he was in their grip. It could happen that the newcomer devoted himself to private (even intimate)
things that others would not otherwise see in public and did not know that he was being shot. "
In the opinion of the Municipal Court, the information obligation in question was only partially fulfilled
and was therefore not fulfilled properly and completely. Information provided by the plaintiff in relation to the population
and to the passers-by around the house did not contain all the requisites as prescribed
§ 11 paragraph 1 of Act No. 101/2000 Coll. Namely, it did not contain information on the right of access
to personal data, the right to correct personal data, as well as information about other rights
data subjects specified in Section 21 of Act No. 101/2000 Coll. Other people were notified
to operate the camera system only with tables on buildings that also did not meet

conditions of § 11 paragraph 1 of Act No. 101/2000 Coll., when they contained only a warning that

that the space is monitored and there is a complete lack of information about how the information obtained from the camera

the complainant's system. The Municipal Court therefore stated that it had no reason to

to change anything in the conclusion, which previously failed to fulfill the information obligation of the accused

pronounced.

On the basis of all the above, the Municipal Court found the action to be well founded and therefore

contested decision for illegality pursuant to Section 78, Paragraph 1 of Act No. 150/2002 Coll., Judicial Code

annulled and remitted the case to the Office by its judgment No. 10 A 78 / 2015-31 of 29 August 2019

for further proceedings.

For the sake of completeness, the appellate body adds that the accused filed in the present case on 12 September 2019

an appeal in cassation against the judgment of the Municipal Court against the statement of costs.

Due to the fact that the accused did not pay the court fee for filing even after the summons

cassation complaint, the court proceedings were a resolution for non-compliance with the fee obligation

Of the Supreme Administrative Court No. 1 As 339/2019 - 35 of 14 November 2019 stopped.

The legal force of the judgment of the Municipal Court No. 10 A 78 / 2015-31 thus remains unaffected. In this

the proceedings are in accordance with the provisions pursuant to Section 78, Paragraph 5 of Act No. 150/2002 Coll., the

Code of Administrative Procedure,

the President of the Office is bound by the legal opinion expressed in that judgment. With respect to

The above-detailed conclusions of the Municipal Court have no other procedure than to annul

decision of the administrative authority of the first instance and return the case for a new hearing.

The administrative body of the first instance will therefore be forced to take into account, inter alia, the conclusion in the new

decision in the matter

the court of the parties to the offense (formerly referred to as an administrative offense) pursuant to the provisions of § 45 para.

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letter f) of Act No. 101/2000 Coll., ie non - provision of information to data subjects to the extent or

statutory.

When considering the amount of the sanction for this offense, the administrative body of the first instance will then measure the legal one

the scope of mandatory information pursuant to the provisions of Section 11, Paragraph 1 of Act No. 101/2000 Coll. and frequency

and the extent of the information actually provided on the placards placed, and shall also take them into account

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the deployment and effective effectiveness of the information thus provided to the accused. In the discretion of authority The question of how appropriate it is to take into account the enormous amount of the sanction also remains at first instance the total length of the proceedings, taking into account the weakening of the purpose of the sentence in the individual sense as well as general prevention in connection with the time lag from the assessed act.

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 12, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)

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