OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-03988/20-54

DECISION

The Chairman of the Office for the Protection of Personal Data as an appellate authority competent under Section 152, paragraph 2

of Act No. 500/2004 Coll., Administrative Code, decided according to the provisions of § 152 paragraph 6 letter b) of the Act No. 500/2004 Coll., Administrative Code, as follows:

Dissolution of the accused, company XXXXXX, with registered office Lidická XXXXXX, ID: XXXXXX, against decision of the Office for Personal Data Protection no. UOOU-03988/20-48 of February 1, 2022,

is rejected and the contested decision is confirmed.

Justification

Definition of the matter

[1] Administrative proceedings in the matter of suspected breach of obligations pursuant to Article 5 paragraph 1 letter a) and Article 6

paragraph 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016

on the protection of natural persons in connection with the processing of personal data and on free movement

of this data and on the repeal of Directive 95/46/EC (hereinafter "Regulation (EU) 2016/679") was initiated

by order of the Office for the Protection of Personal Data (hereinafter referred to as the "Office"), which was the accused company

XXXXXX, with registered office XXXXXX, ID: XXXXXX (hereinafter referred to as the "accused"), delivered on February 4, 2021.

The basis for its issuance was the control report no. UOOU-02631/20-15 dated October 7, 2020

and other file material obtained during the inspection of sp. stamp UOOU-02631/20 for the accused according to

of Act No. 255/2012 Coll., on control (control regulations), including handling of objections to control

finding by the chairman of the Office no. UOOU-02631/20-20 dated December 22, 2020. Against the said

the accused filed a timely objection to the order, on the basis of which the order was canceled and the administrative

proceedings were initiated

it continued.

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[2] On April 28, 2021, the administrative body of the first instance issued a decision,

no. UOOU-03988/20-26, by which the accused was found guilty of committing an offense under

§ 62 paragraph 1 letter b) of Act No. 110/2019 Coll., on the processing of personal data, because it violated

one of the basic principles for the processing of personal data according to Articles 5 to 7 or 9 of the Regulation

(EU) 2016/679, which as a personal data controller pursuant to Article 4 point 7 of Regulation (EU)

2016/679, committed by sending a business natural person to the address of its registered office a written

an offer to be registered in the Register of Trade and Companies maintained by it, when these personal data are in scope

name, surname, address of place of business and

IČO was obtained from the trade register

and processed without any of the legal titles listed in Article 6 point 1 of Regulation (EU)

2016/679. A fine of CZK 50,000 was imposed on her for the aforementioned criminal conduct.

[3] Against this decision of the Office, the accused filed an appeal in a timely manner

decision in its entirety.

[4] By decision of the Chairman of the Office no. UOOU-03988/20-35 dated July 14, 2021 was

the above-mentioned decision of the Office no. UOOU-03988/20-26 of April 28, 2021 canceled and the case

returned to the administrative body of the first instance for a new hearing. Chairman of the Office

he criticized the contested decision in particular for the vagueness of the description of the act and its simplicity

interchangeability with other possible acts, further violation of the accused's right to express himself

to the basis of the decision, basing the decision on evidence that was not there

part of the administrative file, and the shortcomings of its justification.

[5] On August 17, 2021, the administrative body of the first instance filed 4 complaints (ref. UOOU-03988/20-38 to Ref. UOOU-03988/20-41) directed against the accused, concerning the sending of an offer for registration in the Trade and Trade Register.

[6] With regard to the factual circumstances relating to the subject of the complaint based on the file under no. UOOU-03988/20-38 (complaint of Mr. XXXXXX) the administrative authority of the first instance sent the accused notification of the initiation of proceedings on a misdemeanor, no. UOOU-03988/20-42 dated August 17, 2021, which the accused was served on August 26, 2021. At the same time, the administrative body of the first instance informed the accused about the fact that there will be joint proceedings on the offences.

[7] On February 1, 2022, the administrative body of the first instance issued decision no. UOOU-3988/20-48 (hereinafter referred to as the "contested decision"), by which the accused was recognized in the joint proceedings are guilty of committing offenses according to § 62 par. 1 letter b) of Act No. 110/2019 Coll., of which as a personal data administrator pursuant to Article 4 point 7 of Regulation (EU) 2016/679 committed by sending in an unspecified period from May 7, 2020 to May 18, 2020, conducting physical to Mr. XXXXXX at the address of the headquarters at Street XXXXXX, ID: XXXXXX, and at an unspecified time from on August 30, 2018 until September 5, 2018, to Mr. XXXXXX, an individual doing business, at his address registered office at ul. XXXXXX, ID: XXXXXX, a written offer for registration in the Trade Register maintained by it and businesses that contained their personal data in the scope of name, surname, place of address business and IČO, which she obtained from the trade register and thus processed without pro such processing of personal data had a legal title according to Article 6(1) of Regulation (EU) 2016/679.
A fine of CZK 70,000 was imposed on her for the aforementioned criminal conduct. At the same time, she was according to her § 95 paragraph 1 of Act No. 250/2016 Coll., on liability for misdemeanors and their proceedings, imposed the obligation to compensate the costs of the misdemeanor proceedings in the amount of CZK 1,000.

[8] The accused filed an appeal against the above-mentioned decision of the administrative body of the first instance on February 25, 2022, the dissolution by which the decision was challenged in its entirety.

Decomposition content

[9] In the analysis, the accused stated that she considers the contested decision unreviewable.
According to § 62 paragraph 1 letter b) Act No. 110/2019 Coll. applies that the administrator commits an offense by
that it violates any of the basic principles for the processing of personal data according to Articles 5 to 7 or 9
Regulation (EU) 2016/679. In addition, the accused stated that the (violated) principle is not only necessary
to determine by reference to a legal norm, but above all to name, for reasons of reviewability, to
there could be no confusion. According to the accused, the office only bluntly states that the accused violated
principle in Article 6(1) of Regulation (EU) 2016/679, however, he did not specify which one. Following on from that then
states that the administrative body of the first instance dealt with whether the accused's actions could not have been
based on one of the legal titles according to Article 6(1) of Regulation (EU) 2016/679. Accused
however, he points out that principle and legal title are different concepts.
[10] Furthermore, the accused stated again that the act referred to in statements I. and II. attacked
did not allow the decision, as it did not process or record the data in any other way
the complainant, but the administrative authority of the first instance took it as proven that she sent the letter to the
complainant,
on the basis of the complaint of the complainant and the copy of the alleged letter of the accused submitted
the complainant. In support of circumstantial evidence to form a coherent logically connected
chain of evidence According to the accused, the administrative authority of the first instance procured the evidence that is
in the contested decision listed under numbers 3-9, while e.g. evidence nos. 7 and 8 (article of
November 28, 2018 "Fraudsters take millions out of entrepreneurs' pockets, for fake registrations
companies and trademarks - BusinessInfo.cz" and an article dated August 2, 2011 "Catalog companies
attacks constantly. Beginning entrepreneurs remain the target - Podnikatel.cz") they allegedly have
to record the actions of the accused, but the accused is not mentioned anywhere in the mentioned articles.
Thus, the accused has proven that the administrative body of the first instance is acting illegally, because
tends to look for evidence against her.
[11] Regarding the sanction imposed, the accused stated that it was in direct contradiction to Article 83, paragraph 1

Regulation (EU) 2016/679, as the imposition of administrative fines should be in each individual case
effective, proportionate and dissuasive. As the accused is in liquidation, any fine is according to her
opinion with no effect and no deterrent effect for the futuro. In addition, the accused considers the amount deposited
penalty for being unreasonable, as there should have been a one-time processing of the data in the scope
name, surname, business address and ID number that are publicly available, while none
no damage was caused to the persons concerned. The accused further stated that according to the administrative authority
of the first instance is based on the nature of the case in case of violation of Article 6, paragraph 1 of Regulation (EU)
2016/679
about a high degree of typical seriousness, however, the accused did not learn what the high degree was
type severity measure. At the same time, the administrative body of the first instance confuses nature and seriousness.
According to the accused, the sanction thus imposed is unreviewable.
[12] In conclusion, the accused stated that the subject administrative procedure is the only complication in the regular one
during the liquidation of the accused, therefore and for this reason firmly believes that the appeal body of the dissolution
fully complies and cancels the contested decision.

Assessment by a second level authority

[13] On the basis of the report filed by the accused, the appellate authority reviewed the contested
decision in its entirety, including the process that preceded its issuance.

is characterized

[14] First, the appellate body dealt with the contested inadmissibility of the contested
decision. Unreviewable according to the constant jurisprudence of administrative courts and according to
doctrines comprehends such a defect of administrative decision which
as
incomprehensibility or lack of reasons. The Supreme Administrative Court in the judgment of
December 4, 2003, no. 2 Ads 58/2003-75 stated that (legal sentence) "as unreviewable for
incomprehensibility can generally be considered such a decision of the court, from the statement of which it is not possible to

determine

how the court actually decided on the matter, i.e. whether it dismissed, rejected or granted the claim, or whose

the statement is self-contradictory. This term also includes cases where it is not possible to distinguish what the statement is

and what about the justification, who are the parties to the proceedings and who was bound by the decision. Unexaminedness

for lack of reasons is based on a lack of factual reasons, not partial ones

deficiencies in the justification of the court decision. At the same time, these must be factual defects

findings on which the court bases its decision-making reasons." According to the resolution of the extended panel

of the Supreme Administrative Court of February 19, 2008, no. 7 Afs 212/2006-76 then

the non-examination of the decision due to lack of reasons must be interpreted in its own right

in the real sense, i.e. as the impossibility of reviewing a certain decision due to the impossibility of finding out

therein its contents or the reasons for which it was issued. These criteria can then also be applied to

assessing the unreviewability of administrative decisions.

[15] According to § 62 paragraph 1 letter b) Act No. 110/2019 Coll. the administrator commits an offense by

that it violates any of the basic principles for the processing of personal data according to Articles 5 to 7 or 9

Regulation (EU) 2016/679. The administrative body of the first instance stated in the contested decision,

that the accused violated Article 6(1) of Regulation (EU) 2016/679 by her actions, while (on page 15)

stated that the violation of the obligation under Article 6, paragraph 1 of the mentioned regulation "consists of a violation

basic principles of personal data processing, i.e. principles of legality". In the contested decision

so it is explicitly stated which principle was violated. The appellate body considers that any

the absence of wording (that it is a principle of legality) should not arouse any

doubt which principle is involved. Article 6 of Regulation (EU) 2016/679, named

"Lawfulness of processing", is included in Chapter II of Regulation (EU) 2016/679, which bears the title

"Principles". Thus, through a systematic interpretation, it can be concluded that the violated principle is the principle

legality of processing. The appellate body does not contradict the accused outlined difference between the principle

and legal title. One of the main manifestations of the principle of legality is that the administrator can personal

process data only if it has at least one of the legal titles to do so

set out in Article 6 paragraph 1 letter a) to f) of Regulation (EU) 2016/679. The appellate body did not find so contested decision unreviewable.

[16] Regarding the accused's argument that the acts mentioned in statements I. and II. did not allow, and that the Office tends to look for evidence against her, the appellate body states that the Office received next to complaints of Mr. XXXXXX and Mr. XXXXXX three other complaints (no. UOOU-03988/20-39 to no. UOOU-03988/20-41). According to the appeal body, the administrative body of the first instance dealt with it in detail content and form of letters (proposal for registration in the Trade and Trade Register) that were attached to the complaints and came to the conclusion that the originator of the letters in question is one and the same person. With reference to internet articles discussing the fact that the accused had been sending for a long time document proposals for registration in the Trade and Trade Register to business entities in very a short time after their registration in the trade register, the administrative body of the first instance arrived to the conclusion that the sending of the letters in question is common, even characteristic of business the practice of the accused. All internet articles that are based in administrative as evidence file, they explicitly mention the company XXXXXX, i.e. the accused. In the accused mentioned in the article from

on November 28, 2018 "Fraudsters are taking millions out of the pockets of entrepreneurs, for fake registration of companies and trademarks - BusinessInfo.cz" it is stated that "[companies] also go letters from Informatik or Firmdata companies demanding money for registration in the Register trade and commerce. Folders go to entrepreneurs shortly after they have registered their new business company". In an August 2, 2011 article, “Catalog Firms Attack All the Time. They remain the target budding entrepreneurs - Podnikatel.cz" it is then stated that "XXXXXX /…/ companies are aware registered the business community by sending a letter to start-up companies and entrepreneurs, in to whom they offered to be included in their company register - the Trade and Trade Register".

[17] According to the appellate body, the administrative body of the first instance evaluated very carefully all the evidence and dealt in detail with the defense of the accused, concluding that the accused committed the above offences. With the conclusions of the administrative body of the first instance

stated in the justification of the contested decision, the appeal body fully agrees.

The accused does not present any arguments in the breakdown, from which it would be possible to conclude,

for what reason does he disagree with the conclusion of the administrative body of the first instance, only curtly

notes that it did not process the personal data of the complainants. Administrative authority of the first instance according to

of the appeal body proceeded in accordance with the principle of material truth (§ 3 of the Administrative Code),

because he procured sufficient grounds for the decision in order to establish the factual situation, which they do not have

reasonable doubt. The accused herself in the proceedings did not assert any facts that could be considered

search for evidence, nor did any such facts come to light during the proceedings.

In her defense, the accused only put forward assumptions based on speculative grounds,

for which it is essentially impossible to find any means of proof, while her claims were

internally contradictory. The appellate authority therefore does not share the opinion of the accused that the administrative

authority of the first instance

he tended to look for evidence against her.

[18] Regarding the accused's objection that the statement on the imposed administrative penalty is unreviewable,

the appeal body refers to the judgment of the Supreme Administrative Court no. 4 As 51/2007-68 of

March 27, 2008, according to which "the recapitulation of factual findings, which is followed by only

stating the legal criteria for imposing a fine, without making it clear if and how

the legal criteria for imposing a fine were evaluated, it is completely insufficient. Consideration of the administrative

authority must lead to an assessment of the individual nature of the illegal act, while the considered

circumstances must be distinguished into aggravating and extenuating circumstances and always be assessed in perspective

specific impact on the given case. If the administrative body states only so much that to some aspect

observed without saying what value, even abstractly expressed, he assigned to this aspect,

such a claim becomes largely indeterminate and, as a result, unverifiable".

The administrative body of the first instance justified the imposed fine, including its amount, on four pages

of the contested decision, while, according to the appeals body, he took into account and gave sufficient reasons

all relevant circumstances according to Article 83(2) of Regulation (EU) 2016/679. With the amount of fine imposed

the appellate body fully agrees with her justification.

[19] The accused sees the unreviewability of the statement on the administrative penalty in the fact that

it is not clear from the contested decision what is meant by a high level of type severity,

and at the same time in the fact that the administrative authority of the first instance confuses the nature and seriousness of

the act. Administrative

authority of the first instance in the contested decision (on p. 15) on the nature of the breach of duty according to

Article 6(1) of Regulation (EU) 2016/679 stated that this consists in a violation of the fundamental principle

processing of personal data, i.e. the legality of the processing. He further stated that the said violation

principles must be evaluated as a breach of duty that shows a high degree of typicality

severity. The administrative body of the first instance did evaluate the nature and seriousness of the violation

obligations under Article 6(1) of Regulation (EU) 2016/679 in one sentence, but there is no indication

that he would in any way confuse nature and seriousness. The Supreme Administrative Court in its judgment no. 1

As 289/2021-43 of April 29, 2022 stated that "the factual essence of the delict is based on

always only to define the typical seriousness of the conduct and the upper limit of the fine corresponds to it

expression of the truly most serious possible violation of a legally protected interest".

In the justification of the contested decision, the administrative authority of the first instance stated that for the violation

the basic principles of processing can be, according to Article 83, paragraph 5 letter a) to impose Regulation (EU) 2016/679

administrative fines up to EUR 20,000,000, or in the case of a company, up to 4% of the total

annual turnover worldwide for the previous financial year, whichever is higher.

Because in accordance with Regulation (EU) 2016/679, the highest fines can be imposed for violating the principle of legality

the possible upper limit of the fine, the administrative authority of the first instance quite rightly brought a high one

degree of typical seriousness of actions, i.e. social harmfulness. Based on the above

the appellate body does not consider the verdict on the imposed sanction to be unreviewable. The amount of fines imposed

considers the appeal body to be reasonable. Although the accused processed data that is public

available in the trade register, however, even this data cannot be processed arbitrarily without

of any legal title. The fact that the persons concerned were not harmed, administrative

considered by the first-instance authority as a fact acting in favor of the accused.

[20] The appellate body also did not accept the accused's argument that as a result of her liquidation

imposed administrative penalty ineffective and without deterrent effect. The Supreme Administrative Court in its

judgment no. 6 As 68/2017-53 of June 7, 2017 (point 25) stated that "jurisprudence

of administrative courts usually attributes a preventive and punitive function to administrative sanctions".

It follows from the cited judgment that the punitive function represents "punishment" in the original word

sense, i.e. a purely negative consequence of the unlawful act, which in this case lies

in an intervention in the perpetrator's property sphere. The preventive function includes, on the one hand, deterrence

offenders from further violations of legal norms in the future, but also a warning to others

to persons that the alleged illegal conduct is not tolerated by the state. Accused saved

although punishment is likely to lack an individual deterrent function to some extent, even though

according to § 170 of Act No. 89/2012 Coll., Civil Code, decision on voluntary cancellation

of a legal entity with liquidation is not an irreversible decision, and therefore does not necessarily lead to dissolution

legal entities. The fact that the accused company voluntarily entered into liquidation itself,

thus, according to the appeal body, it is not a reason for reducing the fine or waiving the imposition of the penalty

for the offense committed, as in this way the companies could avoid the penalty for

breach of legal obligations. Notice of initiation of inspection containing a request for a response

specific questions regarding the processing of personal data were delivered to the accused on August 10

2020 and on September 2, 2020, the accused was canceled with liquidation based on the decision of the general meeting.

The defendant's entry into liquidation could thus be purely purposeful. General preventive function

and the punitive function of the sentence is, however, maintained according to the appeal body.

[21] The accused's argument that the administrative proceedings led by the Office is the only complication in the ordinary

during its liquidation, the appellate authority considers it irrelevant, since the fact that it is

the company in liquidation is not in itself a reason for the administrative authority to issue

reversed the decision.

[22] For all the above reasons, therefore, the Appellate Body decided as stated

in the statement of this decision.

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Lesson learned:

this decision in accordance with the provisions of § 152 paragraph 5 of the Act

Against

No. 500/2004 Coll., Administrative Code, dissolution cannot be filed.

Prague, July 8, 2022

M.Sc. Jiří Kaucký

chairman

(electronically signed)

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