OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DBA2R *

Ref. UOOU-01894 / 18-18

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 20 May 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-01894 / 18-8 of 15 May 2018 on the basis of the dissolution of the accused, the city

,

based

, 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

The basis for initiating administrative proceedings for suspected misdemeanor conducted

The Office for Personal Data Protection (hereinafter referred to as the “Office”) with the accused, the city

(hereinafter referred to as the "accused"),

based

in connection with the disclosure of the personal information of the notifier in the summonses was

inspection report ref. UOOU-06390 / 17-13 of 30 October 2017, taken by an inspector of the Office

1/5

, permanent residence

PhDr. Petr Krejčí and the file material collected within the scope of the inspection in question, namely

including objection material, which was concluded by a letter from the Chair

Office ref. UOOU-06390 / 17-16 of 18 December 2017.

The collected file showed that the accused in the summonses

according to § 125h paragraph 1 of Act No. 361/2000 Coll., on traffic on roads and on change

certain laws (the Road Traffic Act), which have been sent to hundreds of alleged ones

offenders in the first quarter of 2017, reported personal data

in the range of name, surname, date

birth and address, in conjunction with the information that the latter is the notifier

infringement. In addition, it should be noted that the documents on the basis of which the accused

sent out the calls in question for payment of the fine were

mostly primarily

submitted to the Police of the Czech Republic in the matter of alleged abuse of power, ie not

to the accused with the aim of initiating proceedings in the matter of violation of Act No. 361/2000 Coll.

On the basis of the situation thus established, the administrative authority of the first instance considered that

accused of acting as a controller of personal data processed in connection with

violating the obligation stipulated in § 5 par. 1 let. f) of the Act

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

process personal data only in accordance with the purpose for which they were collected and for another purpose purpose only within the limits of the provisions of Section 3, Paragraph 6 of this Act, or if the data subject has so provided prior consent. He thus committed an offense under § 45 para. c) of Act No. 101/2000 Coll., because he processed personal data in a way that did not correspond to the intended purpose, for which he was, first by order ref. UOOU-01894 / 18-3 of 16 April 2018, fined CZK 12,000.

Although the accused filed a proper opposition to the order, it was nevertheless issued decision no. UOOU-01894 / 18-8 of 15 May 2018 (hereinafter referred to as the "Decision") again the conduct of the accused qualified as a misdemeanor pursuant to § 45 para. c) of the Act No. 101/2000 Coll. and imposed a fine of the same amount, ie CZK 12,000.

However, the accused challenged the decision in a timely manner, in which he described the decision as unreviewable and in conflict with Act No. 500/2004 Coll., Administrative Procedure Code. Therefore, he suggested annul the decision and stay the proceedings.

In his submission, the accused, apparently with reference to the previous statement, stated that if he did on notification of a police authority, the notifier is the relevant police department. Not then a police officer or police officer, whose personal data are therefore not part of the file, however, these are easily traceable. A citizen who submits a traffic notification the offense, which he himself discovered and documented, acts in the subsequent administrative proceedings as notifier and as the sole witness. He does so completely voluntarily and with forethought and must therefore be understood that his personal data will be part of the file. A suspect from the commission of a traffic offense has the right to know all the decisive facts that led to determine the illegal situation, ie the method of its detection. Police authority in case of discovery offense, document this and leave a challenge in a visible place on the vehicle absent driver. If a citizen finds a traffic offense, he does not have this therefore, it can also be evaluated as an expression absent driver at all guessed. Negotiations

consent to the provision of personal data in question, which were used only within the
reported administrative offenses, ie in accordance with the purpose for which they were collected.
Requirements for the call for payment according to § 125h of Act No. 361/2000 Coll. are not, in the opinion
accused, formulated exhaustively and must within the complexity and completeness of the description of the act
include the method of detecting and documenting the infringement. For police and guards
a specific police department is indicated and, if the whistleblower is a citizen, his or her personal data are part of it
description of the act and the legal requirements of the call.
Formulation of a description of the deed, as one of the mandatory requirements of the call prescribed
provision of § 125h of Act No. 361/2000 Coll. it is intended to emphasize only the indication of place and time
its commission, while leaving other substantive requirements to the administrative body, which according to
circumstances and administrative discretion will decide on the specific content of this
description in order to provide the offender with complete and comprehensive information on which the offender has
legal claim and on the basis of which it will be decided whether to pay the set amount. For replenishment
the accused reminded that no one doubts the need for him to be in the description of the deed
the type and registration number of the vehicle with which the infringement was committed, although this
the law also does not explicitly state mandatory factual information anywhere. Statutory regulation
administrative proceedings do not allow the keeping of data enabling the notifier or witness to be identified
separately from the file. In the file documentation, the offender, resp. each,
who demonstrates a legal interest, to view, even in the so-called "pre-trial phase". It cannot therefore be ruled out that
the notifier will face legal action by vehicle operators.
The inclusion of personal data in the call also clearly monitors the process economics, as
the person concerned does not have to request the information in question, for example, by his physical presence at
office and subsequent copying of the relevant passages.
In conclusion, the accused expressed the view that the administrative body of the first instance dealt with his arguments
only in part and described its justification as unrecognizable. With the reasons he gave, he was then charged

did not identify. In this context, attention is drawn to the conflict between two standards, ie the Administrative Procedure Code and Act No. 101/2000 Coll., which cannot be settled in the manner specified in the decision. Plus, he has the question of how the interests of motor vehicle operators whose protection is protected remain unresolved the infringement was caught by a person not authorized to do so by law. Accused within the framework of openness, helpfulness, information and transparency of the public administration "Fair" behavior to tell operators not only what the law imposes and what must be content prescribed calls, but also what the call may contain.

The appellate body reviewed the decision in its entirety, including the previous process its issue and first dealt with the arguments of the accused.

In this context, it recalls in particular that Act No. 101/2000 Coll. must be perceived as general legislation governing the processing of personal data. From this point of view, it is therefore necessary to processing of personal data within the administrative proceedings can be viewed through the prism of Act No. 101/2000 Coll. However, Act No. 101/2000 Coll. did not infringe any special rules on processing personal data, of course e.g. including the relevant provisions of Act No. 361/2000 Coll. or Administrative Procedure Code. This concept was then fully respected by the administrative body of the first instance within justification for the decision. The opinion of the accused, according to which in the exercise of the misdemeanor agenda, which is undoubtedly a state performance, resp. public authority, is not bound by law and may

to exceed the legal framework, for example for reasons of transparency, is in flagrant conflict with Article 2 (2) of the Charter of Fundamental Rights and Freedoms and Article 2 (3) of the of the Republic. For this reason, the supremacy of the point of view must also be unequivocally rejected procedural economics aspects of legality.

It should also be noted that the violations of Act No. 101/2000 Coll. was found solely in connection with the communication of personal data through calls to pay the specified amount pursuant to the provisions of Section 125h of Act No. 361/2000 Coll. Therefore, it is necessary

consider as irrelevant the arguments of the accused of the right of the offender to inspect the file within
possible subsequent administrative proceedings, which, as must be stated in particular, make no decision
did not question. It is on the basis of the exercise of the right to inspect the file that protection must be ensured
interests of the operators of the motor vehicles concerned, by analogy with the case for which
refers to the accused himself, when the violation was found by a police authority, while a particular police officer or
police officer are traceable. Of course, it is not excluded that on the basis of the implementation of this right
proceedings will be initiated against the acquirer of the relevant shots, ie information. This matter
however, it is also irrelevant to the subject-matter of the present proceedings. Moreover, it can be recalled that neither
the accused did not initiate any such proceedings, resp. did not question any of the documents obtained
. This was not the primary notifier of the subject
violation of Act No. 361/2000 Coll., however, even if this were disregarded, from
the fact of submitting documentation in the matter of alleged abuse of powers to the Czech Police
No consent to the processing of personal data can be
requisites of § 5 par. 4 and § 4 let. n) of Act No. 101/2000 Coll.
The legal title for the processing of personal data by the accused was thus exclusively § 5
paragraph 2 (a) a) of Act No. 101/2000 Coll., allowing the processing of personal data without consent
the data subject, if this is necessary to comply with the legal obligation of the controller. Legal obligation for
this case is defined by the provisions of Section 125h of Act No. 361/2000 Coll., which requires a call
contained a description of the act with an indication of the place and time of its commission, an indication of the offense, which
features deed, amount of specified amount, due date of specified amount, other data
necessary to make the payment and instructions. It is possible to agree with the opinion in general
accused, according to which the latter provision emphasizes only the designation of the place
and the time of its commission, while leaving other substantive requirements to the administrative body,
however, these other substantive requirements must relate to the description of the act. So it is clear that if he has
In order for the act to be described, this description must also include the identification of the vehicle which was unlawful
conduct is committed, preferably by indicating the type and registration mark. In contrast, identification

notifier is obviously only an indication of the source of information, which with its own description
it has nothing to do with the act and cannot be assigned to any other particulars of the call. The opinion of the accused,
according to which the identification of the notifier (witness) is an immanent part of the summons under
§ 125h of Act No. 361/2000 Coll., Resp. according to which that is the subject of his reasoning,
therefore, it must be rejected as unreasonably extensive and purposeful. Exceeding the frame
defined by the provision of § 125h of Act No. 361/2000 Coll. so the law was broken
No. 101/2000 Coll. That accused this conclusion, including the related arguments that moreover
corresponds to the views of the administrative body of first instance which the appellate body considers to be fully
recognizable, flatly rejects, has no meaning in terms of qualification of his act.
Therefore, the appellate body did not accept the accused's arguments and did not find any errors
in the procedure of the administrative body of the first instance.

However, the Appellate Body considered it necessary to take into account the existing legislation,
represented in particular by Regulation (EU) 2016/679 of the European Parliament and of the Council of
April 27, 2016 on the protection of individuals with regard to the processing of personal data
and on the free movement of such data and repealing Directive 95/46 / EC (hereinafter referred to as the "General
Regulation")
and further Act No. 110/2019 Coll., on the processing of personal data. According to the provisions of § 66 para. 5
Act No. 110/2019 Coll. then “proceedings initiated pursuant to Act No. 101/2000 Coll., which were not
legally terminated before the date of entry into force of this Act shall be completed in accordance with the law
No. 101/2000 Coll. ”, which must be related to this case. But at the same time it is necessary
recall also Article 83 (7) of the General Regulation, which provides that… each Member State may
lay down rules on whether and to what extent administrative fines may be imposed on the institutions
public authorities and public entities ’”, to which the provisions of Section 62, Paragraph 5 of Act No. 110/2019 Coll.
It orders the Office to refrain from imposing an administrative penalty also in the case of an administrator
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, May 20, 2019

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman