OFFICE FOR PERSONAL DATA PROTECTION

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Ref. SPR-2298 / 10-70

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 the Act No. 110/2019 Coll., on the processing of personal data, decided taking into account § 2 paragraph 1 of the Act No. 250/2016 Coll., on liability for misdemeanors and proceedings against them and § 62 para. 5 of the Act No. 110/2019 Coll., on the processing of personal data pursuant to the provisions of § 152 para. a) and ve connection with § 90 par. 1 let. c) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection, No. SPR-2298 / 10-56, of 27 April 2016 is amended so that in the statement the words “for which, in accordance with § 45 paragraph 3 of the Act No. 101/2000 Coll. imposes a fine of CZK 200,000 (in words, two hundred thousand Czech crowns) " shall be replaced by the words "the imposition of an administrative penalty". The rest are attacked confirms the decision.

Justification

I. Recapitulation of the current proceedings

[1] Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. C), d) and e) of Act No. 101/2000 Coll. in connection with the processing of personal data of children, pupils and students was notified by the Office for Personal Data Protection (hereinafter "the Office"), which was a party to the proceedings, the Czech Republic - the Ministry of Education, Youth and Sports ('the party to the proceedings'), received on 9 April 2010. The basis for initiating the proceedings was inspection report No. INSP1-0690 / 09-21 / BYT dated 3 December 2009, including the file

material collected as part of the inspection carried out at the party's premises on 5 February

to 30 November 2009, and the decision of the President of the Office on the objections

Protocol No. INSP1-0690 / 09-24 of 19 March 2010.

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[2] On 30 June 2010, the administrative authority of the first instance issued Decision No. SPR-2298 / 10-

15, which imposed a fine of CZK 800,000 on the participant in the proceedings for committing administrative proceedings

of torts according to § 45 par. 1 let. c), d) and e) of Act No. 101/2000 Coll. The party against the proceedings

to that decision, which the President of the Office, by his decision of the SPR

2298 / 10-22 of 1 November 2010 rejected.

[3] Subsequently, the party to the proceedings filed an action with the Municipal Court in Prague (hereinafter referred to as the

"Municipal Court")

court ”), which upheld the claim and the judgment no. 9 A 1 / 2011-93 of 31 March 2015 above

annulled the said decision of the President of the Office to reject the appeal and returned the case to the Office for further

management.

[4] The President of the Office by decision no. SPR-2298 / 10-34 of 17 September 2015

Decision of the Administrative Authority of the First Instance No. SPR-2298 / 10-15 of 30 June 2010

and the case returned to him for reconsideration, with the proviso that he should deal with factual and legal

assessment of the data processing in terms of

individual facts

corresponding administrative offenses and a sufficient statement of reasons for the decision

assessment of the party's activities.

[5] On 2 December 2015, the administrative body of the first instance issued Decision no. SPR-2298 / 10-

44, which the party to the proceedings for committing administrative offenses under § 45 para. c), d) and e)

Act No. 101/2000 Coll. imposed a fine of CZK 800,000. The decision was challenged again

by an appeal of the party on the basis of which the President of the Office on 18 February 2016

by decision no. SPR-2298 / 10-51 annulled the contested decision again and remanded the case to the Administrative Court

authority of the first instance for a new hearing.

[6] In the new decision no. SPR-2298 / 10-56 of 27 April 2016, the administrative body arrived at

The Court of First Instance concluded in paragraph I to conclude that the party by processing sensitive

personal data indicating the type of disability, the type of other disability

and the symptom of multiple disabilities, violated the obligation set out in § 9 of the Act

No. 101/2000 Coll., thus committing only an administrative offense under § 45 para. e) of the Act

No. 101/2000 Coll. He imposed a fine of CZK 200,000 on a party to the proceedings for this administrative offense. Next

the violation of the law was not proven to the party to the proceedings (statements of the 2nd and 3rd decisions).

[7] According to the contested decision, the substance of the administrative offense was fulfilled by

that the party collected sensitive data on the health status of specific pupils

or students. Data were collected in two separate files, one in each

pupil or student, similar data were collected in both files. In one

from the files, the subject was marked with a birth number, in the second file was the birth number

replaced by a pupil's code designed to uniquely identify him / her and avoid duplication.

According to the contested decision, the party to the proceedings collected such sensitive data

did not have any legal title from the exhaustive list of legal titles for processing

sensitive personal data specified in Section 9 of Act No. 101/2000 Coll.

[8] The party to the proceedings lodged an appeal against this decision, which was a decision

President of the Office No. SPR-2298 / 10-61 of 21 June 2016 rejected.

[9] This second-instance decision of the Office was subsequently challenged by an administrative party

at the Municipal Court, which in its judgment No. 10 A 150 / 2016-26 of 19 September 2019

dismissed the party's action.

[10] The Municipal Court concluded that the directly applicable regulation of the European

Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural

persons

persons in connection with the processing of personal data and on the free movement of such data
and repealing Directive 95/46 / EC (hereinafter "the Regulation"), which entered into force on 25 May
2018, from the point of view of the punishment of the conduct of the party to the proceedings, it does not change anything, however
the infringements in respect of which the party to the proceedings was affected in the present case (that is to say, the new infringement of Article 9 of the Regulation), the Regulation does not set a lower upper limit for fines, as Article 83 Paragraph 5 provides that for breach of the principle of processing, including the conditions relating to consent pursuant to Articles 5, 6, 7 and 9 of the Regulation, an administrative fine of up to 20,000,000 EUR. The Municipal Court therefore stated that the relevant new legislation was not possible considered more favorable to the party to the proceedings.

[11] The party lodged a cassation appeal against this judgment of the Municipal Court to the Supreme Administrative Court, which he based on cassation grounds pursuant to § 103 para. and) and d) of Act No. 150/2002 Coll., the Code of Administrative Procedure, ie illegality consisting in incorrect assessment of a legal issue by a court in a previous proceeding and unexplained inherence in incomprehensibility or lack of reasons for the decision, or in another defect of the proceedings before court if such a defect could have resulted in an illegal decision on the merits. Party cassation proceedings outside
others pointed to the provisions of § 62 para. 5 of the Act No. 110/2019 Coll., on the processing of personal data, according to which the Office should refrain from depositing administrative penalty in the case of public authorities and public bodies established in a Member State State (Article 83 (7) of the Regulation). The party further stated that the municipal court was wrong in law also considered the question of imposing a sanction on the complainant, when the later legal regulation introduced by law on the processing of personal data does not allow the imposition of a sanction for an administrative offense of a public authority
and would be so for the party to the proceedings if it concludes that despite considering the new legislation the complainant committed an administrative offense, clearly more favorable.

[12] In its observations on the appeal, the Office pointed out in particular that
the effects of the provisions of Section 62, Paragraph 5 of Act No. 110/2019 Coll., ie ordered by law
mandatory waiver of the imposition of an administrative penalty on public entities (ie administrators)
and processors referred to in Article 83 (7) of the Regulation) are essentially manifest
inequality of subjects before the law, which would be difficult to defend constitutionally. Office
as an independent institution when adopting a new legislative provision on the waiver of sanctions
public entities was in order to maintain the then legislative status (fine maximum 10
million), due to the fact that this system for state authorities (as a significant
a subset of public bodies) has proved its worth in the past, especially in terms of accountability
specific employees, and its retention would not be so disproportionate in the relationship
to the responsibility of business entities, as is the case now. Business entities at
personal data breaches are subject to fines of up to EUR 20 million. At the same time, it is notorious
It is known that public authorities also have and process an enormous amount of personal data
citizens, and often in critical information systems. Specific character as follows
conceived mitigation of the law should exclude the subordination of the matter below the scope of constitutional law
principles under Article 40 (6) of the Charter in the context of administrative justice. Even under the transitional
provisions in § 66 para. 5 of Act No. 110/2019 Coll., the legislator stipulated that “proceedings initiated
pursuant to Act No. 101/2000 Coll., which was not validly terminated before the date of acquisition
effectiveness of this Act, shall be completed in accordance with Act No. 101/2000 Coll. ”It is therefore clear that
the legislator put before any more favorable legislation (depending on the individual
legal certainty of the parties to the proceedings.

[13] The Supreme Administrative Court in its judgment No. 4 As 376 / 2019-31 of 11 February 2020
set aside both the judgment of the Municipal Court No. 10 A 150 / 2016-26 of 19 September 2019,
so the decision of the President of the Office No. SPR-2298 / 10-61 of 21 June 2016 and returned the case
Office for further proceedings.

[14] In the above-mentioned judgment, the Supreme Administrative Court stated that in the case under review
In that case, the judgment under appeal cannot be regarded as unreviewable by the
lack of reasons according to § 103 par. 1 let. d) of Act No. 150/2002 Coll., the Code of Administrative Procedure.
He further stated in paragraph 23 of his judgment that the appellant had not argued that
that in the present case he would have committed an offense under § 45 para. e) of the Act
on the protection of personal data consisting in the processing of sensitive health data
the status of specific pupils or students without their consent. The above offense according to
In the new legislation, the Supreme Administrative Court is responsible for a misdemeanor pursuant to Section 62 (1)
letter b) of the Personal Data Processing Act in conjunction with Article 9 (1) of the Regulation. According to § 62 par.
5 of the Personal Data Processing Act in conjunction with Article 83 (7) of the General Regulation
waives the imposition of an administrative penalty in the case of a controller and a processor who is a public authority
can.
[15] However, the Supreme Administrative Court found the cassation complaint to be justified for illegality
attacked
judgment consisting in an incorrect assessment of a point of law by a court
in the previous proceedings according to § 103 par. 1 let. a) of Act No. 150/2002 Coll., the Code of Administrative Procedure.
In addition, the Supreme Administrative Court stated that the city court had erred in failing to take it into account
more favorable legal regulation testifying in favor of the complainant (party to the proceedings), when he cannot
§ 62 paragraph 5 of Act No. 110/2019 Coll., On the processing of personal data in conjunction with Article 83 paragraph 7
Regulation as a public authority may impose an administrative penalty. With regard to the subsequent change
In a new decision, the Office must take into account the later more favorable regulation, which testifies
in favor of a party in accordance with Article 40 (6) of the Charter of Fundamental Rights and Freedoms.
[16] In the opinion of the Supreme Administrative Court, therefore, although more favorable for the party to the proceedings
the legal regulation came into force only after the administrative decision challenged by the action,
the municipal court in the context of the action against the decision of the administrative body, which was
guilt and punishment for an administrative offense, to apply this more favorable legal regulation

in accordance with the resolution of the enlarged Senate of the Supreme Administrative Court No. 5 As 104 / 2013-46 of 16 November 2016.

[17] Regarding the objection of the party to the proceedings that it could be evidenced by a ground for release pursuant to Section 46 paragraph 1 of Act No. 101/2000 Coll., as amended effective until 30 June 2017, the Supreme Administrative the court fully agreed with the conclusion of the municipal court that the content of the administrative file sufficiently supports the conclusion of the Office that the party to the proceedings he could be justly demanded, he did not fulfill.

II. New decision to the extent defined by the Supreme Administrative Court

[18] Pursuant to Section 78 (5) of Act No. 150/2002 Coll., The Code of Administrative Procedure, the administrative body is bound the legal opinion expressed by the Supreme Administrative Court in its annulling judgment. The office was therefore forced to decide the matter again and to waive the imposition of an administrative penalty in accordance with the new, more favorable for the party to the proceedings, legal regulation, which came into force up to the legal power of the Office's decision No. SPR-2298 / 10-61 of 21 June 2016 of the contested administrative

action in the municipal court. Taking into account the principles of economy and speed of administrative proceedings expressed in § 6 of Act No. 500/2004 Coll., Administrative Procedure Code, the matter was decided by the appellate body.

[19] On the basis of all the above, the Appellate Body therefore ruled as is stated in the operative part 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 14, 2020

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)