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Ref. UOOU-04073 / 16-22

DECISION

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

§ 29 and § 32 of Act No. 101/2000 Coll., On the protection of personal data and on the amendment of certain acts,

and pursuant to Section 10 and Section 152, Paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code,

decided on 20 June

2016 according to § 152 par. 5 let. b) of Act No. 500/2004 Coll. thus:

Dismissal of the party to the proceedings, the company KaratNet s.r.o., with its registered office at Tlumačovská 2766/26,

155 00 Prague 5, IČ: 01718321 against the decision no. UOOU-04073 / 16-16 of 6 May 2016

is rejected and the contested decision is upheld.

Justification

The Office for Personal Data Protection (hereinafter referred to as the “Office”), resp. Office Inspector PaedDr. Jana

Rybínová, by decision no. UOOU-04073 / 16-16 of 6 May 2016 imposed on the participant

management, KaratNet s.r.o., with its registered office at Tlumačovská 2766/26, 155 00 Prague 5,

IČ: 01718321 (hereinafter referred to as the "party to the proceedings") measures to eliminate the identified deficiencies

in connection with the processing of personal data of doctors listed on prescriptions

Xarelto 15 mg, which pharmacies present to the party under the Discount

Xarelto program of Bayer, s.r.o.

The preamble to the operative part of the decision states 6 May as the date of the decision

2016, while the signature clause is dated 7 May 2016. As the decision was

submitted on May 6, 2016, it is necessary, also due to the fact that on May 7, 2016 was

Saturday, the entry of the latter date together with the signature clause shall be regarded as

obvious inaccuracy, which, however, cannot render the decision illegal. In accordance with § 70

Act No. 500/2004 Coll., Administrative Procedure Code, therefore the administrative body of the first instance is obliged to do

so

correct the inaccuracy by issuing a resolution.

The basis for issuing the decision was the materials collected during the inspection, carried out

at the party to the proceedings by the Office Inspector PaedDr. Jana Rybínová on August 6, 2015 -

January 27, 2016 concluded by the protocol on control ref. UOOU-06343 / 15-30 of 1 February

2016, which was subsequently confirmed by letter no. UOOU-06343 / 15-34 of 8 March 2016

by which the objections of the auditee were settled. The inspection found that the party to the proceedings

violated the provisions of Section 5, Paragraph 2 of Act No. 101/2000 Coll., on Personal Data Protection and on Change

some laws because it processed the personal data of prescribing doctors without legal

title.

After that, PaedDr. Jana Rybínová was issued an order no. UOOU-04073 / 16-11

of 31 March 2016, which, inter alia, imposed on the party to the proceedings the obligation to “dispose of copies

and prescription scans for Xarelto 15 mg containing personal data

prescribers in the range of name and surname, within 30 days of legal force

this order and no longer collect and process it as part of the discount program

personal data without the consent of the data subject ". Against the order ref. UOOU-04073 / 16-11 of

However, on 31 March 2016, the party filed a regular statement of opposition, stating in particular that “it is not

entire scans and copies of recipes containing the stated personal data should be disposed of, but in full

We consider the disposal of just personal data on scans and copies of prescriptions to be sufficient, namely

their permanent pollution, such as their blackening. "

The subsequently issued decision then accepted the arguments of the party to the proceedings

and imposed on the party the obligation to destroy the personal data of the prescribing doctors

to the extent of the first and last name on the kept copies and scans of the medical prescriptions on

medicinal product Xarelto 15 mg, which pharmacies hand over to the party in the Slevový proceedings

Xarelto program of Bayer, s.r.o. Furthermore, the party to the proceedings was primarily ordered

not collect under the Xarelto Discount Program of Bayer, s.r.o. personal data

prescribers on copies and scans of prescriptions for Xarelto

15 mg without their consent.

The party to the proceedings subsequently filed an appeal against the decision, expressed by the memorandum of 13 May 2016, which was delivered to the Office by e-mail on the same day. The decay was incorrectly designated as an appeal, however, it must be accepted that the party acted in that way in accordance with the inaccurate instructions set out in the decision. Its submission is necessary according to the content considered as a decomposition that was filed in a timely and proper manner.

In the dissolution, the party on the one hand stated that it had already taken steps to provide personal data doctors were not processed in any way within the scope of the discount program in question.

Thus, in the opinion of the party to the proceedings, the situation which the Office considers to be defective was completely rectified.

Nevertheless, the party to the proceedings does not agree that it would violate Section 5 (2) of the Act No. 101/2000 Coll. and claims that the contested decision should be annulled and the proceedings stayed.

In support of his claim, the party specifically stated that the processing of personal data in the range of the doctor's name and surname, as objected to in the decision, processing on the basis of a legal exception according to § 5 par. 2 let. d) of Act No. 101/2000 Coll., when the consent of the data subject is not required. These are "legitimately published data" available in the register of the Czech Medical Chamber established by the Estates Regulation No. 21 of the Czech Medical Chamber Chamber on the list of members of the Czech Medical Chamber and visiting persons according to § 6a of the Act No. 220/1991 Coll. According to the party to the proceedings, such processing is by no means law limited, in particular not for the purpose of the processing or the source from which the personal data are obtained.

This was also stated in the objections to the inspection protocol ref. UOOU-06343 / 15-30 ze on 1 February 2016, which unfortunately were not validly submitted. However, as part of its activities, the Office as a service to the public and the provision of consultations in accordance with the relevant provisions of law brief statement on the matter under ref. UOOU-06343 / 15-34 of March 8, 2016. In it stated that the name and surname of the doctor, which are publicly available by law No. 220/1991 Coll., can be processed without the consent of the data subject. He also stated that to do so

however, publicly available data no longer includes the number or date of issue of the recipe and the data
on the prescribed medicinal product, for processing within the program in connection with identifiers
doctors also occurred. However, these items are not in the decision of the party to the proceedings
reprimanded. The decision is expressly based only on the alleged unjustified processing of the name
and the surname of the doctor, which, however, the party considers to be contrary to the opinion of the Office

mentioned in the above statement. Processing the name and surname of the doctor without consent
doctor is possible on the basis of a legal exception according to § 5 paragraph 2 letter d) of the Act
No. 101/2000 Coll., and thus cannot be the basis for alleging violation of Act No. 101/2000 Coll.
and the imposition of remedial measures.
Subsequently, the party to the proceedings recalled the provisions of Section 1 of Act No. 101/2000 Coll., Which, according to
in his opinion, clearly defines the subject matter of the relevant legislation, ie the fulfillment of everyone's right to
protection against unauthorized invasion of privacy. Other spheres of the data subject, according to
in his opinion, do not fall within the subject matter and purpose of the said law and are therefore not mentioned
protected by law. At the same time, the information on prescribing the drug has nothing to do with the private sector
doctor, but purely with his performance of health care, ie with business
activities. The party to the proceedings thus considers that the processing of the above-mentioned recipe data
does not fall within the scope of Act No. 101/2000 Coll. Furthermore, Statute No. 21 Czech
of the Medical Chamber on the list of members of the Czech Medical Chamber and visiting persons according to § 6a
Act No. 220/1991 Coll. § 3 stipulates that the public lists of the Chamber always contain the following
publicly available data: Title, name and surname of the doctor, expertise of the doctor and the municipality in which the doctor
performs his profession. From the expertise of a particular doctor, it can undoubtedly be inferred that during exercise
its activities also prescribe the relevant medicinal products, so it goes
about a publicly known fact and not the private sphere of a doctor protected by law
No. 101/2000 Coll. Information that the doctor in one case prescribed one specific
does not give any picture of the general activities of the doctor, especially if not

All pharmacies participate in the program, or have a discount on the prescription from any other

therefore do not provide, and therefore only some are submitted under the program to claim the discount

prescriptions on which the doctor prescribed Xarelto 15mg. The potential of this data to create some

ideas about the activities of the doctor and the intervention in his private sphere are thus completely

excluded. In addition, the party to the proceedings states that the prescription number is not a mandatory requirement

recipe, there are no numbering rules laid down by law. This is fully available

doctor and may be completely accidental. The recipe number thus has no informative value

and does not provide any relevant information about the doctor, let alone the information it would represent

or allow interference with the doctor's privacy. For the reasons set out above, the party considers

that there was no violation of Act No. 101/2000 Coll., as there was no interference with the private

the doctor's sphere, which is only protected by this regulation.

The Appellate Body examined the contested decision in its entirety, including the

which preceded its release. In particular, the appellate body dealt with the party's arguments

procedure expressed in decomposition.

Regarding the legal reason for the processing of personal data according to § 5 par. d) of the Act

No. 101/2000 Coll., with which the party to the proceedings argued, the appellate body primarily considers

It is necessary to recall that personal data is a certain entity of data items that in your

summary must correspond to the definition contained in § 4 letter a) of Act No. 101/2000 Coll.

It must therefore be information relating to a specific or identifiable data subject, which is,

as follows from § 4 letter d) of Act No. 101/2000 Coll., any natural person to whom the person

data apply. In order for the natural person concerned to be identified, or at least identifiable,

the data item entity in question must contain direct or indirect identifiers that

in particular, it shall distinguish the person concerned from others and, where appropriate, allow him to be contacted. Without

such identifiers the relevant information does not have the character of personal data and its handling

cannot be assessed by the prism of Act No. 101/2000 Coll. In the treated case, such

Identifiers are just the name and surname of the doctor. These are undoubtedly personal in themselves

data, namely publicly accessible in the sense of § 4 letter l) of Act No. 101/2000 Coll. However, the entity
data items processed by the party to the proceedings was not limited to these identifiers
and has been extended to include other items, which, however, are essential in conjunction with clear ones
identifiers exceeded the scope of the legal title according to § 5 par. 2 let. d) of Act No. 101/2000 Coll.
The processed personal data therefore represented the name and surname of the doctor and further to these
identifiers weighing information about the prescription, prescribed medicine, etc. After disposal above

specified identifiers remaining data item entity such as serial number or day
prescription and prescription details, etc., lose the character of personal data because
this range of data cannot be directly or indirectly assigned by the controller or other entities to
the handling of such modified information is therefore not subject to the regime
Act No. 101/2000 Coll. The purpose of the contested remedy is to limit the scope
processed information so that it is no longer a summary of personal data. After
the removal of doctor's identifiers will not be personal data and will not be so
to violate Act No. 101/2000 Coll. The participant's statement itself corresponds to this
recipe numbering procedure. Furthermore, the appellate body considers it necessary to point out that the data
about the expertise of a particular doctor cannot be identified with the information on the prescription of a particular drug.
Regarding the subject of rights and obligations regulated by Act No. 101/2000 Coll., It is necessary
recall that this law reflects a modern, extensive concept of privacy. Alone
however, the concept of privacy is not defined by any legislation, so it is necessary
to mention, for example, the judgment of the Constitutional Court of the Czech Republic file no. Pl.ÚS 24/10 of 22 March
2011 published sub No. 94/2011 Coll., Which states, among other things: “The primary function of the right to respect
to private life is to provide space for the development and self-realization of the individual personality.
In addition to the traditional definition of privacy in its spatial dimension (protection of dwellings in the wider
in the sense of autonomous existence and uninterrupted creation by the public authorities
social relations (in marriage, in the family, in society), the right to respect for the private

life also includes a guarantee of self-determination in the sense of an individual's fundamental decision-making about himself same. In other words, the right to privacy also guarantees the individual's right to decide at its own discretion, whether, or to what extent, in what way and under what circumstances facts and information from his personal privacy should be made available to other entities. "

This opinion is fully in line with the current concept both within the European Union and with the case law of the European Court of Human Rights (see, for example, S. and Malone vs. UK No 8691/79 of 2 August 1984, or Niemietz v. Germany No 13710/88 of 16 December 1992), which rejects a restrictive interpretation of the term soukrom private life ’as the degree of private life is also realized within the framework of professional or business activities. Privacy therefore also includes the aspect of the general right to informational self-determination, in the Czech Republic, moreover, explicitly guaranteed in Article 10 (3) of the Charter of Fundamental Rights and freedoms, guaranteeing everyone's right to protection against unauthorized assembly, disclosure or other misuse of personal data which was the subject of the conduct in question manifestly infringed. It should be emphasized in particular that if the data subject will not be able to control the provision of their personal data or this will be weakened, in particular if personal data are used without legal authorization for other than original purposes, as happened in the treated case, such an individual will be towards his disadvantaged communication partners and its ability to socialize will be limited ties and to decide for themselves, which will obviously weaken fundamental rights and freedom.

Moreover, it is not possible to agree with the statement of the party to the proceedings that Act No. 101/2000 Coll. is strictly limited by privacy. The provisions of § 1 of the Act, recalled by the party to the proceedings No. 101/2000 Coll. in addition to the general reference to everyone's right to privacy, it also refers to other documents, in particular Directive 95/46 / EC, on the protection of individuals with regard to processing of personal data and on the free movement of such data, or to the Convention on the Protection of Personal Data persons with regard to the automated processing of personal data No. 108, which does

privacy undoubtedly favored, but the adjustment of the processing rules in question

they do not rigidly completely identify and generally link personal data with privacy

with the protection of all fundamental human rights and freedoms (see Article 1 of both Directive 95/46 / EC and

Convention No. 108).

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The appellate body therefore rejected the party's arguments set out in the appeal.

Likewise, the appellate body did not find in the procedure of the administrative body after an overall examination

first instance no defects causing incorrectness or illegality of the decision. On

Therefore, for all the above reasons, the Appellate Body ruled as set out in

opinion of this Decision.

Lessons learned:

pursuant to the provisions of Section 91 (1) of the Act

Against

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, June 20, 2016

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

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