OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00CKAJM *

Ref. UOOU-00944 / 18-13

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and Section 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 19 July 2018 according to § 152 par. 6 let. (a) of the Administrative Procedure Code as follows:

Based on the dissolution of the accused,

natural persons established, established

against the decision

Office for Personal Data Protection Ref. UOOU-00944 / 18-7 of April 23, 2018, the statement of the contested decision is amended so that in the statement the words “a fine of CZK 30,000 (in words thirty thousand Czech crowns) "are replaced by the words" a fine of 10,000 CZK (in the words ten thousand Czech crowns) ", the rest of the contested statement is confirmed.

Justification

The basis of administrative proceedings for suspicion of committing an offense in connection with processing of personal data during the operation of the website

against

to the accused,

natural person with registered office

(hereinafter "accused"), was a report of the inspection

Ref. UOOU-09225 / 17-11 of 12 December 2017, taken by an inspector of the Office for Protection personal data (hereinafter referred to as the "Office") Mgr. and Mgr. Božena Čajková, including the file material collected as part of this inspection.

On the basis of the evidence presented, the Office came to the conclusion that the accused had committed both offense according to § 45 par. 1 let. e) of Act No. 101/2000 Coll., on the protection of personal data and amending certain laws. He has done this because at an unspecified time since 2009 until 14 January 2018 at the latest on the above-mentioned websites for approximately 30,000 users, their sensitive data regarding sexual orientation and preferences, without having a proper legal title to do so. He thus violated § 9 of the law No. 101/2000 Coll. allowing the processing of sensitive data only with the express consent data subject and without this consent only in the cases specified in § 9 letter b) to i) of this Act.

Furthermore, the Office stated that the accused also committed a misdemeanor pursuant to § 45 para. f) of the Act No. 101/2000 Coll., as he did not provide the data subject with information to the extent or by law in a prescribed manner, which he did by also at an exactly undetermined time since 2009 no later than January 14, 2018 on the above website data subjects information on the processing of personal data, as he did not provide them with the method processing (in particular the extent to which personal data will be made available to other users), whether personal data will be passed on to other entities, what is the procedure for exercising rights data subjects according to § 21 of Act No. 101/2000 Coll. and what personal data will be retained after cancellation of the registration and for what purpose. Thereby, he violated the obligation set out in § 11 para. 1 Act No. 101/2000 Coll., ie the obligation of the controller to properly inform the data subject.

For the above reasons, the accused was ordered on the basis of order no. UOOU-00944 / 18-3 of On February 20, 2018, a fine of CZK 40,000 was imposed. The accused filed against the order proper resistance, thus canceling the order. However, following the following procedure, the administrative body

first instance by decision no. UOOU-00944 / 18-7 of 23 April 2018 (hereinafter referred to as "Decision") again fined the accused for identical conduct, but this time in in the amount of CZK 30,000.

The accused objected to the decision (but the defendants incorrectly referred to as the order) timely filed decomposition. This, as must be pointed out, also contains somewhat emotional passages, however, which should be considered irrelevant and therefore no attention will be paid to them.

From a material point of view, the accused primarily opposed the amount of the fine imposed on him, which given his income, it seems disproportionate. He further objected to the passage of reasoning decision on page 7, which states that the defendant's arguments are inconsistent and individual the claims contradict each other. The accused, according to his claim, thought that he was processing not personal data but only anonymous data as he was unable to get on available information to find the real people behind them. He does not have to do this explicitly mentioned, an e-mail address or an IP address is sufficient. Moreover, the series data could be false, resp. it could be just a mess of random data. Amount data subjects mentioned in the decision is therefore unrealistic and unsubstantiated.

Furthermore, the accused denied that he would be invited to acquaint himself with the documents and at this request did not react, as stated in the grounds of the decision. In fact, he should only be provided the opportunity in question, but did not use it.

As for the amount of the fine, the accused reiterated a case of data leakage of 1.2 million clients were fined seven hundredths of a percent of net income, which is to be incomparable to the degree of disability in relation to his income, while rejecting the argument administrative authority of the first instance, which pointed out the incomparability of the two cases. Fine then, in the opinion of the accused, he cannot even uphold the principles set out in the regulation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter Regulation ”), which considers a fine of 4% of annual turnover to be dissuasive. In this context the possibility to waive the imposition of a fine pursuant to Section 40a of Act No. 101/2000 Coll. was also reminded.

or the possibility of imposing a reprimand instead of a fine.

The decision should be

as the accused believes, site users are degraded to

"Incompetent poor people" who did not have the opportunity to truly decide freely whether

register or not, as personal data processing information is not read by even 1%

new registrants and enter their data voluntarily, it being clear that they will

for some processing.

In conclusion, the accused admits his mistake, but this was not, in his view,

intentional, was remedied before the corrective action was imposed and, moreover, did not occur

to no data leakage. For all these reasons, he then asks for forgiveness, or at least

reduction of the fine, to a value that will be tied to the documented number realistically

personal data processed. Someone is also required to deal with the matter

really knowledgeable about technical issues and issues of user behavior on social networks.

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 regard, he found, above all, the accused, as evidenced, when registering the user

(by completing and submitting the registration web form) collects

in particular the following personal data: IP address, e-mail address, address, date of birth,

gender, user

name or other optional particulars provided on a voluntary basis

user such as own description of the user, interests, information about the partner sought. On

on the basis of these data items, the natural person concerned is the least identifiable and these

in total they meet the criteria of personal data according to the definition given in § 4 letter a) of the Act

No. 101/2000 Coll.

At this point, it is necessary to recall the judgment of the Supreme Administrative Court ref. 9 As 34/2008

of 12 February 2009, according to which the identity, ie the identity of the person… in its essence
means nothing more than the possibility of contacting that person in a certain way… “It can be concluded that
that, in addition to contact details (eg address details,
residence or e-mail address) also have data items that will allow the person
within the framework in question, in this case individualize within the registered users,
ie distinguish from others (eg by name, even user). However, this condition was also the case
fulfilled. It is therefore clear that the accused processed personal data and the presumption
that it only processed anonymous data should be considered as purely purposeful.
The number of data subjects concerned is then only relevant as an ancillary criterion in terms of
determination of the amount of the sanction and the resulting figure is, despite the documented occurrence of actually existing
persons,
it is really possible to lead a controversy. However, it is also necessary to recall the provisions of § 5
paragraph 1 (a) c) of Act No. 101/2000 Coll. requiring administrators to process only accurate personal information
data and, if necessary, update them. So if the accused had doubts about his identity
its users, should take action during processing and not question their number up
within this procedure, resp. should not in fact have looked at the subject matter during processing
data as information relating to real persons, which is from the point of view of this procedure
determining.
The personal data in question were kept in a database and were therefore apparently processed
subject to Act No. 101/2000 Coll., while the accused held the position of administrator pursuant to Section 4
letter j) of Act No. 101/2000 Coll.
The basic duties of the controller then include processing personal data on the basis of
available legal title, in this case on the basis of explicit consent pursuant to § 9

information according to § 11 of the Act
Act No. 101/2000 Coll. and provide the data subject

No. 101/2000 Coll. However, the accused violated these obligations, which he acknowledges on the one hand

at the same time the fulfillment of these obligations, including the very fact of personal data processing

fundamentally downplays, thereby

his argument really seems somewhat

inconsistently.

Detected breach of obligations imposed in § 9 and § 11 of Act No. 101/2000 Coll. not possible

to mix with the violation of Section 13 of Act No. 101/2000 Coll., which clearly distinguishes this case

since the data leakage penalty of about 1.2 million clients of the imposed company

to pod

their circumvention, and

It should be added that although the voluntary registration of users and their users must be allowed in principle

some awareness of further processing of personal data. At the same time, however, it is necessary

to recall that, from a general point of view, some administrators do not insufficiently fulfills its

obligations in order to maintain a certain margin of discretion regarding the next

processing of personal data. Many data subjects often do not realize this at the moment

provision of personal data, but only in the case of causing some damage, which is, of course, reparation

mostly very problematic. For this reason too, it is necessary to consistently insist on proper performance

all obligations imposed on the controller in the processing of personal data and primarily to refuse

any

by any excuse, such as a flat rate

and defamatory labeling of data subjects or rejection of existing legislation such as

formally bureaucratic obstacles.

At this point, I consider it necessary to add that according to the General Regulation, it is consent

considered to be free, concrete, informed and unambiguous

will, which gives consent to the processing of personal data. This consent of the administrator must be

able to prove it, and the data subject has the right to withdraw it at any time. In case of processing

special categories of personal data (ie according to the terminology of Act No. 101/2000 Coll

personal data), which must include personal data about sexual life

or sexual orientation of a natural person, explicit consent is required and is considered

in particular, a clear written statement, which may be digital or Internet

context is used in scanned form, or the relevant statement provided

electronic signature, etc. In particular, reference may be made to Articles 4, 7, 8 and 9

Of the General Regulation, or to the document "Guidelines for consent under Regulation 2016/679"

available on the Office's website.

It should also be recalled that in this case the processing of personal data is considered

data from the accused and not primarily the issue of user behavior on social

networks, and therefore the requirement to invite experts in the latter areas is entirely

unfounded.

It was further stated that the letter no. UOOU-00944 / 18-6 of March 15, 2018 was

the accused is indeed given the opportunity to comment on the grounds for the decision. His

through the administrative body of the first instance duly fulfilled its obligation pursuant to § 36 para. 3

Act No. 500/2004 Coll. and it is irrelevant in what words this was subsequently described.

There was no doubt that there was no response to the note

attributed to the accused in no way, but at the same time it cannot be interpreted in his favor either.

In that regard, the Appellate Body therefore rejected the defendant's arguments. Moreover, as in particular

points out that the conduct of the accused would, as such, constitute a manifest infringement

Of the General Regulation, whereby an administrative act may be imposed for the act in question pursuant to Article 83 (5)

a fine of up to EUR 20,000,000 or, in the case of an undertaking, up to 4% of the total

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

On the other hand, he found that the administrative authority of the first instance did not take sufficient account of

the fact that the registration of users on the website associated with the provision of personal

data was primarily voluntary, no harmful consequences were found and the defendant was not guilty of error corrected immediately after his discovery. For this reason, the appellate body decided to reduce fines. At the same time, it should be recalled that this was complied with in this context without prejudice to any of the parties to the proceedings.

After an overall examination, the appellate body then finds that in the procedure of the administrative body first degree found no further errors. Based on all of the above therefore ruled as set out 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.

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

Prague, July 19, 2018

For correctness of execution: