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OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00CYEJS *

Ref. UOOU-08001 / 18-14

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 § 10 and § 152 para. 2 of Act No. 500/2004 Coll., the Administrative Procedure Code decided on 13 December 2018 according to the provisions of § 152 par. 6 let. a), § 152 par. 5 and § 90 par. 1 let. c) of the Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-08001 / 18-8 of 12 October 2018 on the basis of the dissolution of the accused, the company

based

amends that in the operative part of the contested decision

the words "a fine of CZK 80,000" are replaced by the words "a fine of CZK 40,000", the remainder the contested decision is upheld.

Justification

Administrative proceedings in the matter of suspicion of committing an offense pursuant to § 45 para. h) of the Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts in connection with with insufficient security of personal data processing was initiated by the order Office for Personal Data Protection Ref. UOOU-08001 / 18-3 of 5 September 2018, which He was accused by the company

, based

("the accused"), delivered on 5 September 2018.

The basis for issuing the said order was the inspection report ref. UOOU-12026 / 17-14 ze

on 2 May 2018, acquired pursuant to Act No. 101/2000 Coll. and Act No. 255/2012 Coll.,

on Inspection (Inspection Rules), by the Inspector of the Office for Personal Data Protection (hereinafter referred to as the

"Office")

Mgr. and Mgr. Božena Čajková and the file material collected as part of the inspection carried out

for the accused from January 11, 2018 to July 20, 2018. The accused was recognized by an order

guilty of committing an offense under § 45 para. h) of Act No. 101/2000 Coll. and was

she was fined CZK 80,000.

On 13 September 2018, the defendant received an objection against the above order.

In accordance with § 150 paragraph 3 of Act No. 500/2004 Coll. the order was canceled by the filed resistance and in

the administrative proceedings were continued.

Subsequently, on 12 October 2018, the administrative body of the first instance issued a decision no. UOOU-

08001 / 18-8 (hereinafter "the decision") by which he found the accused guilty of committing an offense

according to § 45 par. 1 let. h) of Act No. 101/2000 Coll. The accused committed this offense

by the fact that the audit records (logs) in the hospital information system did not make it possible to identify them

and verify the reason why the electronic medical records have been consulted and

that it did not carry out regular checks on access to electronic medical records.

The accused was fined CZK 80,000 for committing this offense. Against this

The defendant filed a proper appeal, delivered to the Office on October 29, 2018.

The accused, in the filed appeal, first of all objects to the incorrect legal classification of the found person

fact, as, in its view, it did not infringe substantive law

provisions of Act No. 101/2000 Coll. According to the accused, the formal nor

material features of the offense.

The accused also objected to the illegality of the administrative proceedings which preceded the extradition of the defendant

decision, since, in its view, the administrative authority of the first instance did not deal properly with the documents for issuing the decision, especially documentary evidence (including statements accused), which are contained in the administrative file. This should have infringed the administrative provisions order. The accused also objects to a manifestly disproportionate amount of the fine, which, in her view, is not duly substantiated in accordance with the Personal Data Protection Act, the Administrative Procedure Code and current case law.

At the end of her appeal, the accused proposed that the President of the Office challenge the contested decision annul, or to change the decision and according to § 40a of Act No. 101/2000 Coll. abandoned by to impose a fine or to annul the contested decision and return the case to the administrative authority first instance for reconsideration.

The appellate body examined the contested decision in its entirety, including the process which preceded its publication and reached the following conclusions.

First of all, the appellate body observes that the administrative body of first instance in the operative part of the decision incorrectly stated the ID of the accused. However, this fact does not affect the legality of the dissolution of the contested decision.

Regarding the application of the legislation, the appellate body first recalls that from 25 May 2018 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April is effective 2016 on the protection of individuals with regard to the processing of personal data and on free movement movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation) data). As the offender committed the offense under the effect of Act No. 101/2000 Coll., the proceedings will be conducted in accordance with the previous legislation. The reason is the fact that the previous one the legislation is more favorable to the accused, given the fact that the general regulation

on the protection of personal data allows, in contrast to Act No. 101/2000 Coll. imposition of a sanction of up to 10,000,000 (or 20,000,000) euros, or 2% (or 4%) of worldwide annual turnover.

The constitutional principle under Article 40 (6) of the Charter of Fundamental Rights and Freedoms thus applies,

according to which the criminality of the act is assessed and the penalty is imposed according to the law in force at the time when the act was committed, and a later law will apply if it is more favorable to the offender.

As regards the alleged failure to fulfill the formal character of the offense, the Appellate Body states that The Office does not set additional requirements beyond the scope of § 13 par. c) of Act No. 101/2000 Coll. regarding the certainty of the reason for working with personal data, as the erroneously accused person believes. In the provision of § 13 paragraph 1 of Act No. 101/2000 Coll. namely, the legislator generally characterizes it measures that the controller and the processor are obliged to accept in order to prevent unauthorized processing of personal data. Provisions of § 13 par. 4 let. a) - letter d) Act No. 101/2000 Coll. then these general measures specify for the area automated processing of personal data, ie also for electronic medical management documentation. As stated by the administrative authority of first instance in the contested decision (see page 7), Act No. 372/2011 Coll., on health services and conditions for their provision, does not contain provisions concerning the security of personal data in medical records. For this For this purpose, the above provisions of Act No. 101/2000 Coll. As follows from the file material, the accused processes medical documentation in paper form and electronically in the hospital information system. Administrative body of the first instance in the statement of reasons of the contested decision sufficiently explained why in the case of electronic health care the documentation is negotiated by the accused for the automated processing of personal data. The accused was thus obliged to take the measures defined in § 13 par. 4 let. a) - letter d) Act No. 101/2000 Coll. As follows from the provisions § 13 par. 4 let. c) of the Act it is the duty of the controller or processor of personal data to acquire No. 101/2000 Coll., electronic records that allow to identify and verify when, by whom and for what reason they were personal

data recorded or otherwise processed. It is therefore evident that the Office accused
does not impose any special requirements beyond the scope of Act No. 101/2000 Coll., but is based on
from a requirement defined by the legislator. Therefore, one cannot just refer to the general and broad
formulated reason for processing the patient's personal data, which is the provision of health care
care. With such a broadly worded reason, it would not even be possible to check the legitimacy
processing of personal data of the patient in each individual case, which is the meaning of protection
personal data, because without a legal legal title according to § 5 paragraph 2 resp. § 9 of the Act
No. 101/2000 Coll. and fulfillment of the condition of necessity according to § 5 par. 1 let. d) of the Act
No. 101/2000 Coll. legal processing of personal data is not possible. In this case, it was
The inspection found that the accused actually provided access to the electronic medical system
documentation without giving any reason. Because she wasn't accused
able to prove the reason for processing personal data on the basis of logs in all cases,
but only in most cases, as follows from the file, the conditions of § 13 were not
paragraph 4 (a) c) of Act No. 101/2000 Coll. complied with. Although this obligation has been established
accused in internal regulations, however, was not effectively enforced. From the file
The material collected during the inspection further shows that working with electronic
medical documentation in the hospital
information system is recorded
through logs. The logs show who the electronic medical records are
approached when, from which department, from what station (department), from which room and description of the event
(change, delete). The logs also contain a record of the general reason for accessing the electronic
medical documentation, eg income from the department, work with documentation, transfer
to release. However, these general reasons are not noted for all approaches

medical
with electronic

medical documentation. Work

to electronic

documentation is in fact possible even without recording the reason for this activity.

The alleged argument that a healthcare worker is always bound by law is confidentiality, which according to

in the opinion of the accused, it is in itself a measure ensuring the protection of processing

sensitive personal data of patients, the Appellate Body considers it irrelevant. As above

stated, the controller of personal data must meet the conditions of personal data processing provided to him

imposed by Section 13 of Act No. 101/2000 Coll., regardless of whether its employees have a special

the duty of confidentiality imposed by law and regardless of the duty of confidentiality imposed

in § 15 of Act No. 101/2000 Coll. The risk arising from the processing of personal data does not lie

not only in other unauthorized uncontrolled dissemination of personal data, but also in others

forms of personal data processing, including unauthorized access to personal data, namely

and sensitive data about the health status of patients. As already stated by the Office in the settlement

objections accused in the case, by the fact that the inspected set relatively wide open

access to electronic medical records, without giving a reason

(reason not enforced), leaves the fulfillment of this obligation entirely to its employees.

The accused also objected to the Office's requirements for certainty of the reason for working with personal data

they can lead to significant administrative burdens for medical staff and slowdowns

hospital information system. However, this argument is not based on the truth, because

in most cases, the reason for processing the personal data in the log was stated. In the opinion

of the appellate body, it is therefore clear that if the accused meets the conditions of § 13 par. C)

Act No. 101/2000 Coll. In all, and not only in most cases, this fact is opposed

the current situation can not show a significant administrative burden on the medical

staff. Moreover, as the administrative authority of first instance stated in the contested statement of reasons

decision, for urgent admission can be set in advance the rules so that already at login

users into the hospital information system can occur completely automatically

"Fill in" the reason for working with medical records and proceed to the administration of the procedure
only after the provision of acute health care, and therefore health and life will not be endangered
patients.
The Office alleges that the Office does not comment specifically on the contested decision
to fulfill the material side of the offense, the appellate body states that this fact
it follows from the very fulfillment of the factual nature of the tort and is also evident from the reasoning
decision. The appellate body also refers in this connection to the judgment of the Supreme Administrative Court
court no. 1 Afs 14 / 2011-62 of 30 March 2011, according to which: “Even though they are administrative
authorities are obliged to investigate the specific social danger of the offense, it is usually not necessary
to explicitly address it in justifying their decisions. In principle,
the material side of the administrative tort is already given by the fulfillment of the factual substance of the tort. Until
when it is clear from the circumstances of the cases that there are such exceptional facts which
disregard would lead to a result which is manifestly inconsistent with the purpose and function of the administrative penalty
(ie at a time when the specific social danger does not reach even the minimum limit
type hazards), must address the intensity of the specific societal hazard
and in the statement of reasons'. In this case, the social danger of the offense clearly follows
from the mere fact of compromising the sensitive personal data processed by the accused.
The objection of vague identification of the documents on which the administrative authority of first instance relied at
his decision, the alleged failure to deal with all the arguments accused and insufficient

description of the reasoning which led the administrative body of first instance, the appellate body states that
found no alleged violation of § 50 para. 4 and § 68 para. 3 of the Administrative Procedure Code.
The administrative body of the first instance duly identified the file material that was the basis for it
decision-making, he also described the facts based on those documents. To the administrative
the relevant legislation clearly does not impose an obligation to indicate for each sub-part
description of the facts of a particular document or part thereof on which it is based. Such a procedure

would lead to a significant lack of clarity in the whole reasoning of the decision and would therefore also have an impact on its intelligibility.

With regard to the alleged need to state the reasons for the administrative authority 's decision first instance, the reason why the sanction imposed by it is not of a liquidating nature, the appellate body notes that, since the accused did not object to the liquidation amount of the fine, it did not arise the administrative authority of the first instance to deal with this fact in the justification its decision. According to the resolution of the Supreme Administrative Court of 20 April 2010, file no. mark 1 As of 9/2008, the administrative body only has to “take into account personal and property relations offender if, according to the person of the offender and the amount of the fine that can be imposed, it is clear that the fine could be of a liquidating nature, even in cases where the relevant personal law and the property of the offender in the exhaustive list of aspects decisive for determining the amount not to state explicitly in the decision that the sanction imposed is not accused liquidation character. However, as is clear from the same resolution, in the investigation personal and property relations, it is primarily up to the party to the proceedings whether these provide the administrative authority with the relevant information. According to the judgment of the Supreme Administrative Court of 31 March 2009, file no. No. 8 Afs 18/2007, the liquidation fine is the one that may cause the cessation of business or the elimination of all business the sanctioned entity's activities to repay the fine. However, it is not for a liquidation fine considered to reasonably limit the sanctioned entity in its business activities. Due to the economic position of the accused, the administrative body of the first instance did not reasonably find the imposed sanction to be liquidating.

The appellate body alleges failure to state reasons for the sanction imposed above states that the administrative authority of the first instance imposed a sanction within the legal margin, its amount properly justified, including the application of individual aspects in its determination and also sufficiently justified why the liberation grounds were not met in the present case. In the appellant 's view however, the administrative body of the first instance did not take sufficient account of the relevant authorities in its reasoning

mitigating circumstances, as from the official record of non-imposition of removal measures
identified shortcomings ref. UOOU-12026 / 17-20 of August 2, 2018 shows that the accused
it has already rectified the defective factual situation during the inspection, as it has adjusted its information
system so that the user is always obliged to choose the reason for working with electronic medical
patient documentation. Accused
also issued an order from the Chairman of the Board of Directors
for extraordinary control of the use of user rights and extension of the audit, the subject of which is
carrying out random checks and setting up a system for carrying out regular checks
logs.
The appellate body also took into account the proportionality of the amount of the fine imposed on the other accused
objected, by a decision penalizing the breach of the obligation specified in § 13 par. 4 let. C)
Act No. 101/2000 Coll., in which the administrative body imposed a significantly lower sanction (file no.
02069/16, UOOU-00671/13). In view of the above, the appellant therefore
the authority decided to change the amount of the fine imposed by the administrative authority of the first instance from the
amount

is possible,
CZK 80,000 for CZK 40,000. In that regard, the Appellate Body points out that
decide
as the appeal will be satisfied, as the accused objected
disproportionate amount of the fine imposed by the administrative body of the first instance (see page 10 of the appeal)
and at the same time no damage can be caused to any of the parties to the proceedings. Terms of the provision
§ 152 par. 6 let. (a) of the Administrative Procedure Code concerning the amendment of the decision of the administrative
authority of the first
stages in the appeal proceedings were thus fulfilled.
Finally, the Appellate Body states that, after an overall examination of the file, it complies with

with the provision of § 89 para. 2 of the Administrative Procedure Code, he did not find any further inconsistency between the attacked

the decision and procedure preceding the decision, in accordance with the law.

On the basis of all the above, the Appellate Body ruled as indicated

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, December 13, 2018

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman