OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00CQHFN *

Ref. UOOU-01895 / 18-25

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 21 September 2018

according to the provisions of § 152 par. 6 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Disintegration of the accused, the company

based

against the decision of the Office for Personal Data Protection ref. UOOU-01895 / 18-16

of 30 May 2018, is rejected and the contested decision is upheld.

Justification

The basis of administrative proceedings for suspicion of committing offenses under § 45 para. E), g) and h) of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts against accused, companies

based

("the accused"), the material collected as part of the inspection was carried out at the accused by the inspector of the Office for Personal Data Protection (hereinafter referred to as the “Office”) PhDr. Peter The tailor, who was terminated by the protocol on the control of Ref. UOOU-04102 / 17-16 of 12 October 2017, including materials relating to the settlement of objections terminated by the memorandum President of the Office Ref. UOOU-04102 / 17-20 of 23 November 2017.

On the basis of the evidence presented, the Office came to the conclusion that the accused had committed the first of all offense according to § 45 par. 1 let. e) of Act No. 101/2000 Coll., as it processed personal data without the consent of the data subjects. As a personal data controller, it has done so by: at least from April 2017 until the commencement of the proceedings in question (the notice of commencement of the proceedings was accused delivered on March 26, 2018) processed for the purpose of offering personal services data of its potential customers, an unspecified number in the range of name, surname and phone number. The personal data provided were obtained from actual customers who in a document called put contacts on potential customers accused. The accused thereby violated the obligation stipulated in § 5 paragraph 2 of the Act No. 101/2000 Coll., ie the obligation to process personal data with the consent of data subjects and without of this consent only on the basis of § 5 para. a) to g) of Act No. 101/2000 Coll.

At the same time, the accused, as he also found the administrative body of the first instance, committed a misdemeanor § 45 par. 1 let. h) of Act No. 101/2000 Coll., as it did not adopt or implement measures for ensuring the security of the processing of personal data, which as the controller of personal data committed that, at least from 28 June 2017, ie from the date of the oral hearing and the local inquiry held against the accused in the above-mentioned inspection, until the commencement of the proceedings in question kept documents containing personal data of its customers in lockable cabinets in the office, thereby violating the obligation stipulated in § 13 paragraph 1 of Act No. 101/2000 Coll., ie the obligation to take such measures as to prevent any unauthorized or accidental occurrence access to, change, destruction or loss of personal data, unauthorized transfers, to their other unauthorized processing, as well as to other misuse of personal data. The same the accused, as found by the administrative body of the first instance, committed a misdemeanor under § 45 paragraph 1 (a) h) of Act No. 101/2000 Coll. also by at least from June 7, 2017 to launch

the procedure in question did not ensure that the information system

where it occurs

for automated processing of customers' personal data, were acquired electronically

records of the reason for the accession of a particular user, thereby violating the obligation laid down

in § 13 par. 4 let. c) of Act No. 101/2000 Coll., ie the obligation of the administrator in the area

automated processing of personal data to make electronic records that will allow

determine and verify when, by whom and for what reason personal data were recorded or otherwise

processed.

She was accused of committing these offenses by a decision of the Office no. UOOU-01895 / 18-16 ze

On 30 May 2018 (hereinafter referred to as the “Decision”), a fine of CZK 30,000 was imposed.

On the other hand, the administrative body of the first instance concluded that within the scope of the present

proceedings, the accused could not prove a breach of obligations under § 12 para. 1 of the Act

No. 101/2000 Coll. and thus committing an offense under § 45 para. g) of Act No. 101/2000 Coll.

Therefore, the decision to this extent was terminated.

The defendant objected to the decision with a timely appeal. In it, he proposes a decision

in the parts by which the guilt for offenses according to § 45 par. 1 let. e) and h) of the Act

No. 101/2000 Coll. and impose a fine in that regard, since, in the opinion of the accused,

to the violation in question No. 101/2000 Coll. did not happen.

Regarding the violation of § 5 paragraph 2 of Act No. 101/2000 Coll. the accused stated that the clients were at

Filling in the relevant forms instructed to provide only the contact details of the persons who

they agreed. The accused was therefore in a legitimate expectation that there was a condition of consent

fulfilled. The data thus obtained was used only

once, and therefore the degree of social

The dangers of acting are negligible. The accused then did not create any databases or distribute them

mass communications, etc. Thus, even if, in the opinion of the accused, the law was formally violated,

the material feature of the offense, which means the social harmfulness of the conduct, would not be fulfilled.

The administrative body of the first degree, however, finding and evaluating the character and degree of social harmfulness for the offense.

Regarding the violation of § 13 paragraph 1 of Act No. 101/2000 Coll. The accused stated that during the settlement physical security, a restriction on access to the office where the personal data is located was chosen stored, with the office being used by only one person. Conclusion of the administrative body of the first degree to which, in the event of the agent's inattention when visiting the office, they may be personal The data available to other persons is therefore purely theoretical and very distant from reality. Plus the files in question are marked in such a way that it is not clear what their content is, and therefore whether

contain personal data. The law does not stipulate any specific method of security, it depends on the administrator. As no security incident has occurred, it is not possible declare the security method in question insufficient.

Regarding the violation of § 13 par. c) of Act No. 101/2000 Coll. The accused stated that the functionality internal system was demonstrated during the inspection and subsequently requested even the printscreens which the accused considered sufficient and is willing to present the printscreen, which demonstrate other functionalities of the system at the date of inspection. In this sense, subsequently further communication took place between the accused and the administrative authority of the first instance, however to the invitation to send the relevant electronic records sent under ref. UOOU-01895 / 18-20 of 26 June 2018, the accused did not respond.

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

As regards the defendant 's arguments concerning the failure to assess the social harmfulness of the conduct, then refers to the judgment of the Supreme Administrative Court ref. 1 Afs 14/2011 - 62 of 30 March 2011, according to which: “Despite the fact that administrative bodies are obliged to a specific social the danger of the tort, it is usually not necessary to explicitly address it even when justification of their decisions. In principle, the material side of the administrative offense

it is already given by the fulfillment of the factual substance of the tort. Only when it is clear from the circumstances of the cases

that there are such exceptional facts, failure to take them into account would obviously lead to a result

contrary to the purpose and function of administrative punishment (that is, at a time when

hazard does not even reach the minimum type hazard limit), it must be intensified

specific societal dangers in the justification as well. " In this case, however, how

found the appellate body, the material aspect of the offense was social harm

negotiations have already been fulfilled by the fact that physical data have been processed without a proper legal title

persons mentioned in the document entitled

being accused of this

systematically for a period approaching one year, respectively. at least from April 2017 to March

2018. In addition, as can be inferred from the focus of the accused's activities, it should have been personal data

seniors, a relatively more vulnerable group of citizens in general. Absence of legal

The titles, which moreover is required to prove the accused then cannot be healed through

legitimate expectations. Nor is it a reason to conclude that there is no material

the fact that the personal data in question were subsequently used only

once. However, that fact was duly taken into account in the imposition of the fine

at the very lower limit, which, as should be noted in particular, could have reached a higher level

up to 5,000,000 CZK.

Regarding the violation of § 13 of Act No. 101/2000 Coll. and committing an offense pursuant to Section 45 (1)

letter h) of Act No. 101/2000 Coll., it must be submitted that the conduct in question was correct

qualified as less serious, ie as absorbed by committing an offense according to § 45

paragraph 1 (a) e) of Act No. 101/2000 Coll.

In connection with its own indicated violation of Section 13, Paragraph 1 of Act No. 101/2000 Coll. then it is

primarily obvious that no set of specific measures last mentioned

provision is not really prescribed. However, free storage of file materials without

special security in the office room should be seen as an obvious shortcoming.

Access to the premises in question by third parties is clearly not a priori in practice

exclude. From this point of view, therefore, keeping documentation under lockdown is essential

in this way reduces the risk of unauthorized access, resp. represents another significant

barrier to prevent unauthorized access, moreover, clearly more effective than the accused

recalled absence of content label. The purpose of the measures in question is to prevent them

incidents in question and it is therefore irrelevant that such an event has not yet taken place.

The defendant's arguments concerning the violation of § 13 par. c) of Act No. 101/2000 Coll.,

resp. printscreens

documented during the inspection

in the case of the accused, it is necessary to state above all that already in the protocol on control ref. UOOU-04102 / 17-16 ze

on 12 october 2017, the accused was warned that the electronic records obtained did not allow

determine and verify the reason why personal data were recorded or otherwise processed and were

violation of § 13 par. 4 let. c) of Act No. 101/2000 Coll. The accused also documented

as an annex to the submitted print screen layout from this database,

information system

At the request of the administrative authority of the first instance, these shall be:

electronic records were sent, then the accused, as mentioned above, did not respond.

Furthermore, the Appellate Body also assessed the whole case in the light of the new legislation contained in the Regulation

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of

persons with regard to the processing of personal data and on the free movement of such data, and o

repealing Directive 95/46 / EC (General Data Protection Regulation), however, it does not

no effect on the matter.

The appellate body therefore rejected the defendant's arguments. At the same time after a general review

Notes that no reason has been found to render the decision illegal;

in particular, it considers the fine to be reasonable and did not find any errors of procedure

administrative authority of the first instance. On the basis of all the above, he decided

the appeal body 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.

Prague, September 21, 2018

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman