

OFFICE FOR PERSONAL DATA PROTECTION

Lt. Col. Sochora 27, 170 00 Prague 7

tel .: 234 665 111, fax: 234 665 444

posta@uouu.cz, www.uouu.cz

* UOOUX00CXC77 *

Ref. UOOU-07350 / 18-21

DECISION

Chairwoman of the Office for Personal Data Protection as an 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, according to

§ 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code and according to § 10 paragraph 1

letter a) of the Act

No. 480/2004 Coll., on certain information society services and on the amendment of certain acts

decided on 6 December 2018 pursuant to § 152 para. b) of the Administrative Procedure Code as follows:

Appeal filed by the accused, the company

, based

, against the decision of the Office for Personal Data Protection

Ref. UOOU-07350 / 18-12 of 11 September 2018, is rejected and the contested decision is upheld.

Justification

Proceedings against the accused, the company

based

(hereinafter referred to as the “accused”), regarding the non-cooperation of the liable person

was initiated by issuing an order no. UOOU-07350 / 18-6 of 19 July 2018. It was

the accused has been found guilty of committing an offense under § 15 para. b) of the Act

No. 255/2012 Coll., on control (control rules), because in connection with the implementation of control conducted

under sp. UOOU-04263/17 at the company

within the set time limit

did not, as a liable person, provide the cooperation necessary to carry out the inspection by not sending the written statement requested in the request for cooperation of 5 March 2018 and in the request on supplementing the co-operation of 13 March 2018. The accused hereby violated the obligation stipulated in § 10 paragraph 3 of Act No. 255/2012 Coll., ie the obligation to provide the inspector the co-operation needed to carry out the control, if such co-operation cannot be ensured through of the inspected person, for which a fine of CZK 50,000 was imposed on it. Order no. UOOU-07350 / 18-6 of 19 July 2018, however, was annulled on the basis of a duly filed opposition and the present proceedings were continued.

The result was the issuance of the decision ref. UOOU-07350 / 18-12 of 11 September 2018 ('the decision'), by which the accused was again fined for an identical act in the amount of CZK 50,000.

1/3

The defendants first lodged an objection against the decision by letter of 5 October 2018 within the prescribed period blanket decomposition, which was subsequently supplemented by a submission dated 22 October 2018.

In it, the accused first stated how he sent the commercial message and then how cooperates with the company and other companies. Says that has a contract with each partner.

In the second part of her statement, the accused already commented on the failure to cooperate and further objected to seeking repeated prolongation of administrative requirements management. Specifically, she stated that the mere fact that the accused no longer registered everything communication with the contractor, she can not be burdened and that she considers the controller cooperation provided. In conclusion, the accused described the amount of the fine imposed as disproportionate and inadequate.

The appellate body reviewed the decision in its entirety, including the previous process its release.

Regarding the arguments of the accused, he states above all that the first part has none connection with this proceeding, as this is due to non-cooperation. However may have some relevance to the company's own control under sp. No. UOOU-04263/17.

Furthermore, the appellate body, after getting acquainted with the file in question (file no. 07350/18), found that the accused did not provide the required cooperation when the first call responded by considering all relationships and cooperation with the company for trade secrets and asked for information on what legislation it should accused of proceeding to provide such sensitive data, she claims.

By the following memorandum, the defendant was reiterated all provisions, on the basis of which it is obliged to provide cooperation, as well as was reiterated that it was cooperation is necessary in the ongoing control procedure. Given that the accused did not respond to the above, a request was sent to it, which was the provision in question cooperation is urged. However, the accused also did not react to this. Administrative body of the first therefore issued the above-mentioned order ref. UOOU-07350 / 18-6 of 19 July 2018, in which sanctioned the accused for failing to cooperate. The accused filed against him opposition, in which she also stated that she would comment in writing in the Office for Personal Data Protection within a specified period. Subsequently, however, the accused only stated that she was cooperating with the agency

The director of the accused also stated that he liked it document all required documents that can serve as cooperation within the given checks and requested the sending of requests by the Office for Personal Data Protection so that the accused could cooperate. The administrative body of the first instance is therefore within the framework of the call to familiarize himself with the grounds of the decision again stated what in the cooperation of the accused he demanded. However, the accused responded to this note in such a way that the administrative requirements authority of the first instance as illegal and again asked for clarification on the basis of which

statutory provisions are floated.

2/3

On this basis, the Appellate Body found that the requirements of the administrative body of first instance against the accused were completely legal, the reasons why the co-operation was after the liable person required, the accused were duly communicated several times. Accused of cooperation, however, as it was required, did not provide. Nor does her claim that she no longer records everything communication with the contractor, as the requirement of the administrative body of the first instance is it also applies to the documents it is required to keep.

The appellate body therefore rejected the defendant's arguments. At the same time after a general review found no reason to be unlawful. In particular, it considers a reasonable fine, which was imposed in the lower half of the possible rate and did not find any error of procedure of the administrative body of the first instance.

Likewise, the Appellate Body considers it necessary to note that the provision requested cooperation does not run counter to the prohibition of self-blame, which must be seen as part of it the right to a fair trial under Article 37 of the Charter of Fundamental Rights and Freedoms. In that In this context, it should be pointed out, first, that the cooperation in question was requested in the context of a check that was not conducted against the accused and that this prohibition cannot be confused with the obligation to submit existing documents and to provide factual statements, as the addressee of this obligation is not prevented from defending the proceedings and the documents in question or their significance question (see judgments of the Supreme Administrative Court No. 6 As 159/2014 of 11 August 2015, ref. 2 As 254/2016 of 15 December 2016 and ref. 4 As 92/2018 of 25 May 2018).

On the basis of all the above, the Appellate Body therefore 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 6, 2018

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

3/3