

OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00E1G71 *

Ref. UOOU-01936 / 19-68

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10 and § 152 para. 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided pursuant to the provisions of § 152 para. 6

letter b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Appeal filed by the accused, XXXXXX, against the decision of the Office for Personal Data Protection ref.

UOOU-01936 / 19-56 of 21 November 2019, is rejected and the contested decision is upheld

confirms.

Justification

Definition of things

[1] By decision of the Office for Personal Data Protection (hereinafter referred to as the "Office") no. UOOU-01936 / 19-56 of 21 November 2019, XXXXXX ("the accused") was found guilty of committing an offense according to § 62 par. 1 let. d) of Act No. 110/2019 Coll., on the processing of personal data because it did not take the remedial measures specified in the contested statement decisions imposed on him by the Office by decision no. UOOU-08948 / 18-9 (copy in file kept under ref. UOOU-01936 / 19-2) of 5 November 2018 (hereinafter referred to as the corrective action "). A fine was imposed on the accused for the tortious conduct described above in the amount of CZK 1,500,000. The remedial measures in question were imposed on him as personal trustees data available on XXXXXX.

[2]

The basis for issuing the contested decision was, in particular, the decision itself

on corrective measures and further control protocol ref. UOOU-09488 / 14-74 of 11 May

2018 (a copy in the file kept under file number UOOU-01936 / 19-1; hereinafter referred to as the "Protocol"), on the basis of which

a decision on corrective measures has been issued. Although the inspection under Act No. 255/2012

Sb., On control, sp. UOOU-09488/14 was made in the company XXXXXX, the only one of which

The managing director at the time of the inspection, as at present, was and is charged with the proceedings under this

The audit clarified the relationship of all involved and the audit authority concluded that it is

the accused who determines the purpose and means of processing the personal data in question. The team

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at the same time, it fulfilled the legal definitions of the personal data controller responsible for compliance

processing with the rules for the processing of personal data and therefore there was a procedure for measures

to correct sp. UOOU-08948/18, which resulted in the issuance of a decision on corrective measures,

conducted with the accused himself. The President of the Office rejected the subsequent appeal by a decision

Ref. UOOU-08948 / 18-16 (copy in the file kept under file no. UOOU-01936 / 19-3) of 4 February

2019, when it came to the conclusion, in agreement with the administrative body of the first instance, that the accused was the proceedings

as a controller of personal data and is therefore fully responsible for the lawfulness of the processing,

therefore also for remedial action.

[3] As it turned out from official records ref. UOOU-01936 / 19-4 of 15 April 2019

and ref. UOOU-01936 / 19-5 of 18 April 2019, the remedial measures imposed were not timely

accepted, and the administrative body therefore launched a notification with the accused no. UOOU-01936 / 19-7 of

May 9, 2019 proceedings on suspicion of committing an offense. By the communication of Ref. UOOU-01936 / 19-50

of 21 October 2019, the administrative body of the first instance informed about the collection of sufficient documents

for issuing a decision in the sense of § 36 paragraph 3 of the Administrative Procedure Code, however, the accused

to inspect the file or within the extended period at his request. Instead

expressed in a letter dated 19 November 2019 (registered under UOOU-01936 / 19-54) stating that

was alerted to a threat to the safety of his person due to a fixed deadline

access to the file and therefore decided not to exercise his right. Information from the file, however, according to

his words, he had to ensure, and therefore only expressed himself in writing through the data box.

In particular, he repeatedly stated that he was not authorized to implement the imposed measures and the entire procedure of the Office

considers bullying and illegal.

[4] Subsequently, the administrative body of the first instance issued the contested decision, against which the accused fenced off by proper and timely decomposition.

Decomposition content

[5] By appeal of 17 December 2019 entitled "Opposition to the decision Ref. UOOU-

01936 / 19-56 "the accused challenges the decision of the administrative body of the first instance as politically

motivated, illegal and insufficiently substantiated, resp. substantiated by fiction

information. At the same time, it follows from the text of the submission that he considers the imposed fine to be liquidation.

However, they do not elaborate on their arguments and remain at a very general level.

[6] At the same time, on 17 December 2019, the accused expressed his concern

with the Office's action on its initiative for "the biggest data leakage through the web

<https://hokejoveregace.cz> “.

[7] On 21 December 2019, the accused filed an objection of bias against the Office's inspector

PaedDr. Jana Rybínová, who conducted the proceedings in question. However, in addition to the statement of objections

"I will leave the reasons for bias (...)" absent any relevant reason for the possible

bias of the inspector.

[8] In the memorandum of 1 January 2020, the accused stated that he would comment on the matter on 13 January 2020, ie

at a time when he will be able to comment on the matter in view of the alleged collision with a “procedural superior

proceedings which are being conducted concurrently to the detriment of the Office and other natural and legal persons

persons. "

[9] The accused did so on 13 January when he sent another supplement to the Office, in which he objected bias extended to the entire Office, including all persons acting in the proceedings on behalf of the Office, including

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President of the Office. He justified the objection by saying that the Office was being investigated for an attempted obstruction investigation of the Czech Ice Hockey Association, is suspected of abusing public powers factors causing damage in the tens of millions and at the same time had to try the accused discredit when he did not proceed properly in the investigation of the defendant's complaint. In the part dealing with the grounds of appeal against the contested decision, the defendant in his summarized in principle that the Office's procedure

can be led with the system operator and not with him, ie the person who is not dealing with the matter. As a natural person the non-entrepreneur is not able to conclude a processing contract, he is not entitled to perform any interventions in the database. He also considers deindexing to be an illegal interference in business foreign business entities. He further develops his arguments about the bias of Ing. Josefa Vaculy, inspector who performed the inspection of file no. UOOU-09488/14, and possible political interests representatives of the Office. He considers all this to be reasons for bias and consequently and the illegality of the decision.

is illegal because of the proceedings

Assessment by a second instance body

[10] The appellate body reviewed the contested decision on the basis of the appeal in its entirety, including the process that preceded its release and the following conclusions.

[11] First of all, the Appellate Body notes the controversy over who is the trustee in the situation in question personal data, including the person responsible for taking measures to remedy the shortcomings identified, as well as allegations challenging the legality of the measures themselves are outside the scope of these proceedings. The defendant had and could have made these arguments in the previous proceedings for their imposition

and in case of disagreement with the decision of the President of the Office ref. UOOU-08948 / 18-16, by which confirmed the decision no. UOOU-08948 / 18-9, had the opportunity to defend his rights in an action under § 65 Act No. 150/2002 Coll., Administrative Procedure Code.

[12] Allegations concerning disagreement with the Office's conduct in the defendant's case complaints to the Czech Ice Hockey Association are, by their nature, complaints pursuant to Section 175 (1) of the Administrative Procedure Code and will therefore be dealt with by the administrative authority in this regime. In relationship

however, it is relevant to the present case that that assertion cannot in itself be regarded as an act which renders the contested decision unlawful, since it has no factual connection with it.

[13] As regards the objection of bias raised, the Appellate Body refers in the first place to the provision of § 14 par. 3 of the Administrative Procedure Code, according to which the administrative body shall not take into account the objection, which has not been invoked without undue delay, when the person concerned became aware of the reason for the exclusion. At the same time, it follows from the substance of the objection that it can be invoked exclusively against persons actively therefore, if the accused wished to raise an objection against the inspector, he had it to apply during the proceedings before the administrative body of the first instance, and not subsequently after the issue decision. Nevertheless, the appellate body finds that the accused in relation to the inspector does not state any specific reasons that could constitute its bias in the case or relationship to the accused. The objection of bias in principle for all persons acting on behalf of the Office based on allegations of alleged misconduct in the investigation or conduct of the proceedings then the appellate body recalls, as has been accused many times in the past, a number of bias objections to the inspector Ing. Josef Vacula recalled that with regard to the verdict of the Supreme Administrative court no. 9 As 121 / 2014-36 of 20 November 2014 and judgment no. 9 As 69 / 2015-20 of 27 August 2015, the same should apply when assessing the exclusion of officials from the proceedings principles governing the assessment of the exclusion of judges. The reason for the exclusion of the judge, however

there can be no circumstances in which the judge proceeds in the proceedings of the present case or in his decision-making in other matters.

[14] The mere procedure in proceedings or the issuance of a certain decision in a case cannot be a reason for statement of the official's bias, as the objection of bias cannot be considered as an alternative to ordinary or extraordinary remedies or judicial review. From the accused there is no justification for exclusion any persons from the present proceedings and thus cannot justify the illegality of the decision.

[15] The Appellate Body finds that the contested decision meets all the requirements for it

§ 68 of the Administrative Procedure Code, including that it is duly justified. At the same time, it is clear that the administrative body of the first instance sufficiently dealt with the property relations of the accused in the sense of Decision of the Supreme Administrative Court Ref. 1 As 9 / 2008-133 of 20 April 2010, which are in the present case, in view of the relatively high amount of the fine imposed on natural person (at least formally) not doing business. In this context, it cannot be overlooked that however, the accused did not contribute to clarifying his financial situation, and the question of liquidation character in his submissions did not even specify in any way. From official activities as described in the contested decision, the appellate body is aware that the accused claims to be a person without any income, but at the same time living a relatively expensive life (as found by the authority of the first instance), without it being clear what the source of his income is. You can't miss it either from the very high social harmfulness of actions.

[16] If the administrative body of the first instance has taken available and reasonable steps to determine the property circumstances of the accused and there is nothing to suggest a clear liquidation of the imposed fines, according to the settled case law of administrative courts, on the contrary, it should be the accused appellant of such a nature as to prove it. However, the accused did not do so, not even in the decay or his additions.

[17] In summary, the Appellate Body rejected the defendant's arguments and, in general

The review did not find the contested decision illegal and did not find any errors

in the procedure preceding the adoption of this Decision.

Instruction: Pursuant to the provisions of Section 91, Paragraph 1 of Act No. 500/2004 Coll.,

Administrative Procedure Code cannot be revoked.

Prague, May 14, 2020

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)

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