

Ref. UOOU-04332 / 15-26

DECISION

Chairwoman of the Office for Personal Data Protection, as the 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, and pursuant to Section 10 and Section 152, Paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided on 30 September 2015

according to § 152 par. 5 let. (a) of the Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-04332 / 15-20 of 13 July

2015 based on the appeal filed by the party to the proceedings, the Housing Cooperative Bohúňov

1336-1338, with its registered office at Bohúňova 1338, 149 00 Prague 4 - Chodov, IČ: 25652699,

that according to § 40a of Act No. 101/2000 Coll. waives the imposition of a fine, the remainder of the decision

confirms.

Justification

their web

site located at

Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. C)

Act No. 101/2000 Coll., in connection with the publication of personal data of its members on

its website located at the internet address <http://www.bdbohunova.cz/>,

was initiated with the party to the proceedings by notification to the Office for Personal Data Protection (hereinafter referred to as

"Office") on the initiation of administrative proceedings ref. UOOU-04332 / 15-6 of 21 April 2015.

The basis for initiating this proceeding was a complaint sent to the Office on 9 April 2015

and the facts stated in the findings of the Office, which are part of the file material of this

management. It follows from these documents that the participant in the proceedings, Bytové družstvo Bohúňova 1336-1338,

posted on

internet address

<http://www.bdbohunova.cz/> the following documents with personal data of its members: in the section

"Introduction" document entitled "Attendance list from the meeting of SVJ of March 10, 2015", which contained

personal data 159 natural persons in the range of name, surname, permanent residence, size

co-ownership share, including percentage, number of votes, of which 156

of data subjects also the birth number and for 72 data subjects the signature, further published in the section "About us"

a document entitled "SVJ Notarial Record of 12 May 2014", which included an extract from the cadastre

of 12 May 2014, which contained personal data of 156 natural persons

in the range of name, surname, permanent residence, birth number and size of the share, as well as attendance list

of 12 May 2014, which contained personal data of 130 natural persons in the range of name,

surname, birth number, permanent residence, of which for 54 data subjects also signature, and further document

entitled "Notary record BD of 12 May 2014", which contained personal data of 151 physical

persons in the range of name, surname, birth number, permanent residence and of which for 73 data subjects also

signature, which was to violate the obligation set out in § 5 paragraph 1 letter f) of Act No. 101/2000 Coll.,

thus the obligation to process personal data only in accordance with the purpose for which they were intended

gathered.

On 21 May 2015, a lawyer commented on the notice of initiation of the administrative proceedings

party to the proceedings. In that statement, the party mentioned in particular the fact that

has not received any request from the notifier or any other data subject as of that date,

to which the published personal data relate, about the blocking, supplementing or liquidation of personal data

data. Furthermore, the party to the proceedings stated that it would be appropriate for the administrative body of the first

degree asked all 114 members of his team how they feel the impact of publishing their

personal data on the cooperative's website. This statement was also attached

statement of the managing director of the website administrator <http://www.bdbohunova.cz/>, společnosti

AMIRO, s.r.o., which stated that the notarial record, which was on the above website

the party to the proceedings was placed on 6 June 2014, it was removed on 6 May 2015.

Subsequent verification of the internet address <http://www.bdbohunova.cz/> by the administrative body of the first instance on 22 May 2015, it was found that the link had been removed from the "Introduction" section to the document entitled "Attendance list from the SVJ meeting of March 10, 2015", and further from the section "About us" was removed the document entitled "Notary record SVJ of 12 May 2014" and "Notary BD record of 12.5.2014 ".

The administrative authority of the first instance concluded on the basis of the evidence gathered that as a result of the initial misuse of personal data, it was subsequently disclosed of this data through the justice.cz server, when the documents in question were established in collections of documents. In the opinion of the administrative body of the first degree, these personal data have become legitimately published data in the sense of § 5 para. d) Act No. 101/2000 Coll., which can be processed without the consent of data subjects, which, however, is not the right to the protection of the data subject's private and personal life. Administrative authority

The Court of First Instance therefore considered whether the conduct of the party to the proceedings could be regarded as contradictory

with the right to protection of the private and personal lives of the data subjects concerned and concluded that, given that the publication took place in a context very similar to that for which documents are inserted into the collection of documents, it is possible that the exception for personal processing data (with the exception of birth numbers) without the consent of the data subjects. Administrative authority

However, the Court of First Instance considered that the above argument was not applicable in the case of publication of birth numbers, because, as mentioned above, their legislation, including legal titles for their processing is different from other personal data and is specially regulated in Act No. 133/2000 Coll., on population registration and birth numbers

and amending certain laws. Therefore, if a party has decided to publish the above documents containing birth numbers were up to him to ensure that such a procedure followed in accordance with the relevant legislation, in this case Act No. 133/2000 Coll. Administrative the institution of first instance therefore continued to assess the illegality of the act only in relation to

to publish birth numbers on the party's website.

Following the above fact, a party to the proceedings was on 17 June 2015

stated that the evidence gathered during the proceedings justified the assessment of the case from the point of view of

§ 13c paragraph 1 of Act No. 133/2000 Coll.

On 13 July 2015, the administrative body of the first instance issued a decision, ref. UOOU-04332 / 15-

20, which was a party to the proceedings for breach of duty imposed in § 13c paragraph 1 of the Act

No. 133/2000 Coll. and for committing a tort according to § 17e par. 1 let. b) of Act No. 133/2000 Coll.

a fine of CZK 20,000 was imposed because he used his birth numbers illegally and he was further injured

imposed an obligation to reimburse the costs of the proceedings in the amount of CZK 1,000.

The party to the proceedings filed against the decision of the administrative body of the first instance through

timely appeal delivered to the Office on 27 July 2015. In the appeal

the party stated that the administrative body of the first instance did not respect the principle of unity

fact and the legal assessment of the Office is incorrect, as on the day on which the party to the proceedings was

different legal assessment of the act for which the administrative proceedings were conducted has already been

communicated

state

absolutely did not respond to this communication. According to the party concerned

tacitly agreed to the publication of the data. Furthermore, the legal representative of the party to the proceedings

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argues that the disclosure of personal data did not cause any harm to the data subjects, resp.

none has been proven. According to the party to the proceedings, the material aspect of the administrative tort is

insufficient, resp. zero. According to the party to the proceedings, the administrative body of the first instance burdened its own

made a non-review decision for a number of reasons and did not comply with the evidentiary motions

management incomplete. For the reasons set out above, the appellant claims that the President

Office according to § 152 par. 5 let. (a) of the Administrative Procedure Code, the contested decision in all its

annulled the proceedings and stopped the proceedings because of a complaint about his actions as a personal administrator

data has become clearly irrelevant.

The Appellate Body examined the contested decision in its entirety, including the

which preceded its publication and reached the following conclusions.

First of all, the appellate body states that the party in the appeal filed again

stated some facts which had already been dealt with by the administrative body of the first instance

in the statement of reasons for its decision.

The party contends that it was informed of a different legal classification on 17 May 2015

of the act for which the administrative proceedings were instituted and that the facts of that day have already occurred

the message absolutely did not match. The legal assessment of the administrative body of the first instance is therefore

according to the party to the proceedings completely incorrect. The appellate body states that in the present case

the unity of the acts for which the proceedings were conducted has been maintained. In the notice of initiation

administrative procedure, the act was sufficiently defined. Subsequently during the administration

proceedings, the legal classification of this act was changed and it was administrative as illegal

assessed by the first instance authority only as unlawful in relation to the publication

the reasons for this are set out in the decision. Administrative authority

the party at first instance duly informed that fact by letter of

17 June 2015, so that the party can exercise all its rights. Unity of action -

publication of personal data in specific documents on specific websites - however

has been preserved.

The party also argues that at the time of the legal reclassification of the act, it was already under negotiation

fulfilling the factual nature of another administrative offense did not occur. Appeal to that

The authority states that for liability for an administrative offense it is irrelevant whether at the time

the reclassification of the act within the already initiated administrative proceedings took place illegally

acting or not; the infringement may be terminated and, if not, shall cease to exist

liability for an administrative offense, it is necessary to assess the extent to which the conditions for

imposition of a sanction, resp. waiver of punishment.

The party to the proceedings states that by his signatures the data subjects with the disclosure of their personal data also agreed that their disclosure did not cause any harm to the data subjects. Appeal the body states that the birth number is not stated in the attendance list of the member meeting of the cooperative. In no way can it be construed as tacit consent to the publication of this issue, which has the nature of specific personal data and the use of which is regulated by law. No. 133/2000 Coll. Data subjects only confirm by stating their birth number on this document their participation in the membership meeting. By signing, they do not consent to the publication of documents on website. The requirements for consent to the processing of personal data are regulated in § 4 letter n) and § 5 paragraph 4 of Act No. 101/2000 Coll. Consent means free and a conscious expression of the will of the data subject, the content of which is the consent of the data subject processing of personal data, where the data subject must be present at the time of consent, be informed of the purpose of the processing and the personal data to which the consent is given, which administrator and for what period. Consent of the data subject to the processing of personal data the administrator must be able to demonstrate throughout the processing. Birth number availability. In an Internet environment where there is an unlimited number of Internet users, it can pose a real danger of misuse of this birth number, especially if they are next door other personal data such as name, address and signature of data subjects.

The occurrence of damage is not a precondition for the fulfillment of the factual basis of another administrative tort according to 3/5

therefore

§ 17e paragraph 1 letter b) of Act No. 133/2000 Coll., ie breach of the legal obligation stipulated in § 13c paragraph 1 of Act No. 133/2000 Coll.

The party's opinion that the material aspect of the administrative offense was not fulfilled, recalling the low number of visitors to its website, the appeal body states that the publication of the unambiguous numeric

identifier assigned to the inhabitants of the Czech Republic, on the Internet can fill

material feature of this other administrative offense, in some cases even at low

website traffic.

The party also states in its appeal that by failing to provide evidence that

proposed - examination of witnesses, the administrative body of the first instance burdened its decision

error which constitutes its material inaccuracy as well as non-compliance with substantive law

conditions for a possible sanction of a party to the proceedings. According to the party, this interrogation would

other members of the cooperative to find out how the disclosure of personal data turned out

in their personal sphere. As mentioned above, to fulfill the facts of another

administrative tort according to § 17e par. 1 let. b) of Act No. 133/2000 Coll., ie a legal violation

obligations stipulated in § 13c paragraph 1 of Act No. 133/2000 Coll., it is not decisive whether

data subjects have suffered personal injury. The administrative body of the first instance is not according to § 52

of the Administrative Procedure Code shall be required to take the evidence proposed by the party to the proceedings if

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does not consider it necessary, including the questioning of persons. The Appellate Body is of the opinion that

invasion of privacy must be assessed in aggregate against all the criteria and principles set out

Act No. 101/2000 Coll., including the risks caused by this intervention and the possibilities of abuse

personal data.

As regards the person responsible for committing the administrative offense, the appellate body

that the holder of the domain name bdbohunova.cz is according to the Whois Bytové družstvo registry

Bohúňova 1336-1338 (see official record ref. UOOU-04332 / 15-18 of 17 June 2015),

therefore, the primary responsibility for the published documents lies with the party to the proceedings, even though

some deeds concern individual owners who form a community of homeowners

Bohúňova č.p. 1336, 1337, 1338, Prague 4, Chodov. The administrative body of the first instance did not lead

proceedings against L. K., but against the housing association, because the administrative body of the first instance is not

bound by the content of the complainant's submission. Determining the full circle of participants is an obligation

administrative authority of the first instance. He is also obliged to notify everyone of the commencement of the proceedings participants known to him. The administrative body of the first instance is obliged to evaluate relevant facts, first of all the responsible entity with which the proceedings are to be conducted, what he did.

The party considers that if he is accused of the presence of certain documents in the notarial deed registration, it cannot be the fault of the appellant, but the fault of a notary who by law is responsible for the accuracy of its notarial record, both material and legal. Such an argument party is, however, irrelevant because, as the first-instance administrative body has already stated in the contested decision, the party to the proceedings is not required to publish a notarial deed on their website. If he decides to do so, he is responsible for its content, ie also for the scope of published personal data, which can be adjusted, for example, by blackening. As far as publication of birth numbers in the collection of documents of the public register, this issue is regulated in Section 6 of Act No. 304/2013 Coll., the Act on Public Registers of Legal and Natural Persons. If the birth number is entered in the public register, it is not stated in the copy from the public register either is not published. If the birth number is stated in the documents added to the collection of documents, they shall publish it these documents in accordance with this Act, including birth number. This special legal the amendment thus practically does not take into account the birth number as a unique numerical identifier allocated to the inhabitants of the Czech Republic, is (especially in combination with other personal data that appear in the attendance lists of member meetings forming part of the notarial deed registration, such as name and address, signature) in the Internet environment easily accessible to an unlimited number of people and thus becomes potentially easily abusable data.

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With regard to the above, the appellate body therefore took into account Section 40a of Act No. 101/2000 Coll., according to which if the illegal situation is remedied in accordance with the imposed measure or immediately after the breach of duty has been identified, the Office may waive the imposition

fines. The appellate body is therefore of the opinion that, although the above procedure is administrative the first instance is correct, as the obligation to use personal identification numbers cannot go beyond obligations stipulated in § 13c paragraph 1 of Act No. 133/2000 Coll., and the party to the proceedings therefore committed an administrative offense, the administrative body of the first instance did not take sufficient account of the fact that the party to the proceedings immediately after the finding of an illegal situation, ie after the initiation administrative proceedings, the illegal situation corrected and the documents in question from its website pages removed. The appellate body then took the appeal into account when considering the waiver of the fine low social danger of this other administrative offense, especially that the impact of his

The event was not due to the low traffic to his website, which he documented

serious. The appellate body therefore concluded that the remedy had been remedied by the party proceedings immediately after the finding of a breach of duty, justifies the application in the given case provisions of Section 40a of Act No. 101/2000 Coll., ie waiver of the imposition of a fine.

On the basis of all the above, the Appellate Body ruled as set out in

opinion of this Decision.

Lessons learned:

pursuant to the provisions of Section 91 (1) of the Act

Against

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, September 30, 2015

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman