

OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00EO7IY *

Ref. UOOU-03058 / 20-30

DECISION

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

b)

Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Dismissal of the accused, XXXXXX, established XXXXXX, against the decision of the Office for Personal Protection data ref. UOOU-03058 / 20-21 of 2 February 2021, is rejected and the contested decision is annulled confirms.

Justification

Definition of things

[1] The basis for proceedings in the matter of suspicion of committing an offense pursuant to Section 62 (1) letter c) of Act No. 110/2019 Coll., on the processing of personal data, with the accused, XXXXXX, with its registered office XXXXXX ("the accused"), the complaint was sent to the Office for Personal Data Protection (hereinafter "the accused") "Office") by the complainant, XXXXXX (hereinafter "the complainant"). It follows from that initiative that the accused did not respond to the complainant's request of 31 March 2020 and 2 July 2020 expressed via e-mail address XXXXXX on the cancellation of the auction notice containing his personal data (in the range of name, surname, date of birth and address of residence) publicly available on the XXXXXX indexable website operated by the accused.

[2] Subsequently, the Office first notified the accused with a note ref. UOOU-03058 / 20-4 of

29 July 2020 for a possible breach of Regulation (EU) 2016/679 of the European Parliament and of the Council

of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (the "General Regulation"), namely provided that the accused was also alerted to the obligation to provide the data subject (complainant) without undue delay information on the measures taken, as well as Appropriate communication to the Office. However, the accused did not comment on this warning. An investigation by the Office conducted on October 29, 2020 then revealed that the auction in question the decree containing the complainant's personal data is on the accused's website remain publicly available.

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[3] For this reason, the administrative body of the first instance issued an order no. UOOU-03058 / 20-9 of 30 November 2020, by which the conduct of the accused was qualified as offense according to § 62 par. 1 let. c) of Act No. 110/2019 Coll. and at the same time she was accused a fine of CZK 50,000 was imposed. However, the order was subsequently revoked on the basis of opposition accused.

[4] The result of the ongoing infringement proceedings was the issuance of decision no. UOOU-03058 / 20-21 of 2 February 2021 ('the decision') reaffirming the accused guilty of committing an offense under § 62 para. c) of Act No. 110/2019 Coll. and she was however, a fine of CZK 10,000 was imposed this time because he violated some of the subject's rights data pursuant to Articles 12 to 22 of the General Regulation, which, as controller of personal data, that it did not respond to the complainant's request of 31 March 2020 and 2 July 2020 via e-mail address XXXXXX to cancel the auction notice containing his personal data (in the range of name, surname, date of birth and address of residence) publicly available at indexable website XXXXXX, operated by the accused.

[5] However, the accused objected to the decision with due diligence.

Decomposition content

[6] In the appeal, the accused stated above all that it would be completely violated by the decision

transparency of public auctions, where data from auction participants are available for this reason

forever, as well as are available on the portal www.centralniadresa.cz state administration.

[7] Furthermore, as the accused stated, the XXXXXX portal is not an e-shop or Aukro that collects

personal data only for the current need, but the portal where the auctions take place according to Act no.

26/2000 Coll., On public auctions. The disclosure is therefore ex officio.

[8] Article 17 (1) of the General Regulation is worded as follows:

Applicable law

"The data subject has the right to have the controller delete personal data without undue delay,

concerning the data subject and the controller has a duty of personal data without undue delay

deferred if, for one of the following reasons:

(a) the personal data are no longer needed for the purposes for which they were collected or otherwise processed;

(b) the data subject withdraws the consent on the basis of which the data referred to in Article 6 (1) (a) were and) or Article 9 (2) (a) (a) processed, and there is no other legal reason for processing;

(c) the data subject objects to the processing referred to in Article 21 (1) and there are none overriding legitimate reasons for the processing or the data subject objects processing in accordance with Article 21 (2);

(d) the personal data have been processed unlawfully;

(e) personal data must be deleted in order to comply with a legal obligation laid down in Union law or the Member State to which the administrator applies;

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f) personal data has been collected in connection with the provision of information society services pursuant to Article 8 (1).

[9] Article 12 (1) to (4) of the General Regulation is worded as follows:

1. The controller shall take appropriate measures to provide the data subject with concise, transparent,

in an understandable and easily accessible way using clear and simple language means all the information referred to in Articles 13 and 14 and has made all the information communications pursuant to Articles 15 to 22 and 34 on processing, in particular as regards information specifically for the child. The information shall be provided in writing or by other means, including in where appropriate in electronic form. If the data subject so requests, they may be provided orally, provided that the identity of the data subject is established in other ways.

2. The controller shall facilitate the exercise of the data subject's rights under Articles 15 to 22. In cases referred to in Article 11 (2), the controller shall not refuse to comply with the data subject's request for the purpose of exercising his rights under Articles 15 to 22, unless he proves that he cannot identify the entity data.

3. The controller shall provide the data subject, upon request in accordance with Articles 15 to 22, with information on the data received without undue delay and in any case within one month of receipt of the request. This period is possible if necessary and given the complexity and number extended for another two months. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the request delay. If the data subject submits the request in electronic form, the information shall be provided in electronic form, if possible, unless the data subject requests otherwise.

4. If the controller does not take the action requested by the data subject, he shall inform without delay and no later than one month from the receipt of the request by the data subject of the reasons for non-acceptance measures and the possibility to lodge a complaint with the supervisory authority and apply for judicial protection.

[10] Article 5 (1) (a). (b) and (c) of the General Regulation read as follows:

"Personal data must be:...

(b) collected for specific, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing for the purposes of

archiving in the public interest, for the purposes of scientific or historical research, or for

statistical purposes shall not be considered incompatible with the original purposes in accordance with Article 89 (1)

("Purpose limitation");

(c) proportionate, relevant and limited to the extent necessary in relation to the purpose for which they are

processed (údajů data minimization ').

[11] Provisions of § 62 par. 1 let. c) of Act No. 110/2019 Coll. reads:

"A controller or processor under Title II commits an offense by:. c) violates some

from the rights of the data subject under Articles 12 to 22 of Regulation (EU)

2016/679 or Title II. "

[12] Provisions of § 20 paragraph 1 of Act No. 26/2000 Coll. reads:

'(1) The auctioneer shall announce the holding of the auction by an auction decree stating:

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a) that it is a voluntary auction and, in the case of a recurring auction, this fact,

b) the name of the auctioneer,

c) place, date and time of the start of the auction,

d) designation and description of the subject of the auction and its accessories, rights and obligations on the subject of the auction

associated with it, if they significantly affect the value of the object

auction, a description of the state in which the subject of the auction is located, its estimated or ascertained price,

and, if the subject of the auction is a cultural monument, this fact,

e) the lowest bid and the specified minimum bid that the auctioneer may make,

f) if it requires the deposit of the auction security, the method and deadline for its deposit, the account number and the address of the place,

where the auction security is to be lodged, which is proof of the deposit of the auction security, the amount of the auction security and the method of its return; where applicable, if the auction security can be lodged by credit card or by check,

- g) the method of payment of the price achieved by the auction,
- h) the date and time of the inspection of the subject of the auction, in the case of movables also the place of the inspection and organizational measures to ensure the inspection,
- i) in the case of a joint auction, the order in which the individual items of the auction will be auctioned,
- j) conditions for handing over the subject of the auction to the auctioneer,
- k) possible notification that data on the subject of the auction in the auction notice or their part, in particular, a description of the status of the subject of the auction and the rights and obligations in the subject of the auction are listed only on the basis of available information, or that the petitioner guarantees the properties of the subject of the auction or is liable for its defects only to the extent determined by the auction decree,
- l) a deadline for payment of the price achieved by the auction exceeding CZK 500,000,
- m) the amount of remuneration collected from the auctioneer or the method of its determination, its maturity or arrangement that the auction will be conducted free of charge for the auctioneer. "

Assessment by a second instance body

[13] The appellate body reviewed the contested decision on the basis of the appeal in its entirety, including the process that preceded its release, and first dealt with it arguments of the accused.

[14] In particular, he found that the offense was that the accused had not responded to the request. complainant dated 31 March 2020 and 2 July 2020, which is quite evident moreover, the accused himself did not object in any way to the appeal. However, as is necessary on this to be supplemented on the spot, even if the accused does not find the complainant's request justified, should inform him within the meaning of Article 12 (4) of the General Regulation. If complied, then he had accused of reporting in accordance with Article 12 (3) of the General Regulation.

[15] The Appellate Body further rejected the defendant's claim that it would comply the transparency of the auction, or the performance of tasks, was undermined by this requirement imposed by Act No. 26/2000 Coll. In this context, it should first be noted that each

processing of personal data must meet the conditions laid down by law, for this

the requirements of the general regulation in particular. These include a ban on the processing of personal data in a manner which is incompatible with a properly defined purpose (see Article 5 (1) (b))

General Regulation) and to the minimum extent necessary to fulfill this purpose (see Article 5

paragraph 1 (a) (c) of the General Regulation). The accused then deduces the purpose in question from the law

No. 26/2000 Coll., specifically from the obligation to publish an auction decree. Because in the treated

In this case, it was a voluntary auction, the content of this auction decree is governed by § 20

paragraph 1 of Act No. 26/2000 Coll., without, however, this provision imposing the designation of the owner

the subject of the auction or the auctioneer (in contrast to the requirements of the auction decree

according to § 43 of Act No. 26/2000 Coll., if it would be an involuntary auction). Disclosure

the complainant's personal data, as carried out by the accused, lacked any of the legal ones

titles under Article 6 (1) of the General Regulation and was therefore inconsistent from the outset

with the general regulation. The complainant's request was therefore found by the Appellate Body to be well founded also from a factual point of view.

[16] In addition, the Appellate Body states that even in the case of legal disclosure of the owner's personal data

(bidder) in the auction notice, the time of publication of the auction notice by the auctioneer

to end with the fulfillment of the purpose in question, ie in principle at the moment of the auction. The team

of course, other obligations to publish documents are not affected (eg at the central office)

address or in the event of the auction being canceled in accordance with Act No. 26/2000 Coll.) or

process personal data for other legitimate purposes (tax, accounting, etc.), even in another form

than through publication. Of course, always only until the time of fulfillment

appropriate purpose, and therefore certainly not "forever", as the accused argues.

[17] After an overall examination, the Appellate Body found that in the administrative procedure

no irregularities were found to render the decision unlawful.

In particular, the amount of the fine imposed at the very lower limit of the rate seems appropriate to him.

[18] For all the above reasons, the Appellate Body therefore ruled as set out in
opinion 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, April 7, 2021

official stamp imprint

Mgr. Jiří Kaucký

chairman

(electronically signed)

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