OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-00148 / 13-107

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, and according to § 10 and § 152 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 11 May 2018 pursuant to § 152 paragraph 6 (a) b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Appeal filed by the party to the proceedings, the Czech Republic - the Ministry of the Interior, with its registered office at Nad Štolou 936/3, 170 34 Praha 7, IČO: 000 07 064, against the decision of the Office for Personal Protection data ref. UOOU-00148 / 13-100 of 20 March 2018, is rejected and the contested decision is confirmed.

Justification

Administrative proceedings for suspicion of committing an administrative offense pursuant to § 45 para. e) of the Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, was initiated by notification to the Office for Personal Data Protection (hereinafter referred to as the “Office”), which was a party to the proceedings,

To the Czech Republic - Ministry of the Interior, with its registered office at Nad Štolou 936/3, 170 34 Prague 7, IČO: 000 07 064 (hereinafter referred to as the “party to the proceedings”), delivered on 7 February 2013. The document was written material gathered during the inspection carried out at the party by the inspector Office of RNDr. Kamila Bendová, CSc., From 7 June 2011 to 20 June 2012, inclusive control protocol sp. INSP1-4652 / 11-61 / BYT of 4 July 2012 and decision of the President of the Office on the objections of the audited Ref. INSP1 / 4652 / 1-70 of 7 November 2012.

By decision of the Office ref. UOOU-00148 / 13-79 of 18 April 2013, the party was found

guilty of committing an administrative offense pursuant to § 45 para. e) of Act No. 101/2000 Coll.,

because in connection with the processing of personal data in the National DNA Database operated

The Police of the Czech Republic (hereinafter referred to as the “Police”) processed sensitive data (DNA profile) of 14 subjects

data without their explicit consent, without fulfilling any of the exceptions under § 9 letter b)

to i) of Act No. 101/2000 Coll., for which a fine of CZK 650,000 was imposed on him.

1/5

The party to the proceedings filed an appeal against the above decision, which

The President of the Office rejected by decision no. UOOU-00148 / 13-86 of 2 July 2013

and upheld the contested decision.

The party to the proceedings further decides the President of the Office ref. UOOU-00148 / 13-86 challenged the action

against

decision filed with the Municipal Court in Prague (hereinafter referred to as the “Municipal Court”), which

decided by a judgment no. 3 A 86 / 2013-99 of 13 April 2016 so that the decision of the President

He canceled the Office and returned the case to the administrative body for further proceedings.

The Municipal Court first referred to the decision of the Supreme Administrative Court in the judgment

Ref. 4 As 168 / 2013-40 of 30 April 2014 and subsequently stated that the police are entitled

take genetic samples, keep DNA profiles for future identification and beyond

for the purpose of also keeping records (information system) in which it processes this data. He further stated

that the need to collect genetic material, process the DNA profile and preserve it

in the database must be assessed “in relation to the position of the entity concerned in the criminal proceedings

management, in the broader context of the definition of this concept ’. The City Court also out of the total number

14 data subjects were assessed by each of the 12 disputes, as in the case of XXXXXX and XXXXXX

the plaintiff himself, ie the party to the proceedings, acknowledged his mistake and the unlawfulness of the conduct. In 4

controversial

data subjects, the municipal court upheld the opinion of the defendant, ie the Office, and found that the police

violated Act No. 101/2000 Coll., as it stored sensitive data without the consent of the data subject
for the purposes of future identification, without fulfilling any of the exceptions set out in § 9
letter b) to i) of Act No. 101/2000 Coll. In the remaining cases, he did not agree with the opinion of the Office
and concluded that the police had acted in accordance with the law in these cases and therefore with due regard
on the partial merits of the action, annulled the decision of the Office and remanded the case for further proceedings.
The Office filed a cassation complaint against the judgment of the Municipal Court, but the Supreme Administrative Court
the court rejected by judgment no. 8 As 134 / 2016-38 of 24 October 2017.
After returning the case by a decision of the President of the Office ref. UOOU-00148 / 13-96 of 9 February 2018
the Office issued a new decision no. UOOU-00148 / 13-100 of 20 March 2018, which in point I.
of the statement, found the participant in the proceedings guilty of committing an offense pursuant to § 45 para. e) of the Act
No. 101/2000 Coll., because in the case of 6 data subjects he processed personal data without their
consent, for which in point II. imposed a fine of CZK 240,000 in accordance with Section 45 (3)
Act No. 101/2000 Coll.
The party to the proceedings against the above decision filed a timely appeal on 5 April 2018,
challenging the operative part in point I, with the exception of the part concerning Mr XXXXXX and Mr XXXXXX, and in point II.
The party to the proceedings denies guilt for the offense in the sense of unauthorized processing of sensitive data
masters XXXXXX, XXXXXX, XXXXXX and XXXXXX, and is convinced that the processing complies with the law.
In support of the claim, it states that the provisions of Section 65, Paragraph 5 of Act No. 273/2008 Coll., On the Czech Police
(hereinafter referred to as the “Police Act”), does not only apply to specific criminal proceedings,
but generally to perform police tasks for the purpose of future identification of the person. Personal data obtained
thus not refer to a specific crime, but to the offender as a whole. With regard to it regarding to it,
that criminological statistics show that there is a significant number of perpetrators of intentional crimes
increased probability
increased
and the probability of the future need for their identification and just the collection and storage of identification
data is an effective tool for relapse prevention.

heterogeneous recurrences,

recurrences

including

Yippee

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At the same time, the party commented on the notion of "necessity". The concept of necessity as well as

future identification, in his opinion, must be interpreted in the context of the purpose and system of the law

on the Police, taking into account the tasks of the police. The need to obtain a DNA profile and preserve it is

in the view of the party concerned, the processing of the DNA profile is necessary for the detection

connections between a specific person and an individual offense or for identification

future offender. The need to preserve a DNA profile is thus given when the profile is

necessary to fulfill the task of the police.

The party to the proceedings considers that in the case of performing the tasks of the police in clarifying the crime is

in the interests of the majority society living an orderly way of life, prioritizing security

this part of society from the right to protection of personal data of the intentional criminal offender

activities. By the procedure of the administrative body and by finding the party guilty of the commission

the offense should therefore upset the balance between the rights in question, as it is

the right to privacy of offenders is disproportionately favored.

It further states that sensitive data from all data subjects were obtained in the context of

with specific criminal proceedings where they were in the position of accused of intentional commissioning

crime. It is crucial when collecting personal data for future identification purposes

and their further processing considers the subjective side of the crime, as it testifies

about the offender's internal relationship to crime and represents a qualitative change in behavior

human being, and therefore this is an essential justifying attribute even with regard to criminological statistics

DNA profile processing. In this context, he questions the importance of the fact that three of the above

of these offenders were not convicted, as the institute was effective

regrets. However, he assumes that a crime has already been committed, but before it is reported
a final decision occurs, the event giving rise to the criminality of the offense occurs. From the perspective of
Criminalization, however, the offender committed an intentional crime and therefore necessity
DNA profile processing cannot, in the opinion of the party to the proceedings, be formally linked to a certain type
decision, but its content must be taken into account. The condition of necessity corresponds to this
in § 65 and § 79 of the Police Act relating to the performance of police tasks and not to the final one
criminal conviction.
In case XXXXXX, the party alleges that he has committed an intentional criminal offense (obstruction
enforcement of a decision and expulsion) and therefore, despite the lower level of social harm to the act
shall apply to the same as above. To support this view, he referred to the verdict of the Supreme
Administrative Court file no. 4 As 168/2013 and judgments of the Municipal Court in Prague file no. zn.
9 A 92/2012, ref. 11 A 50 / 2015-107, ref. 11 A 2 / 2017-69.
As regards the amount of the sanction imposed, the party states that it is necessary to assess in this context
and the material side of tortious conduct. Given the fact that in his opinion it occurred
to violate the legal obligation only in the case of 2 data subjects, the National DNA Database is not
a publicly accessible database and there is no risk of third parties gaining access to stored sensitive information
considers the amount of the sanction imposed to be disproportionate. In addition, the police action after the discovery
unauthorized processing should be considered as an attenuating circumstance.
In the light of all the foregoing, the party sought the annulment of the contested decision.
The appellate body examined the contested decision in its entirety, including the process which
preceded its publication, and reached the following conclusions.

It can be stated at the outset that the party to the proceedings maintains its view that it is subjective
the intentional aspect of the offense is in itself a sufficient criterion for assessment
the necessity of processing sensitive data pursuant to Section 65 (5) and Section 79 (1) of the Police Act.
In view of the above at the same time, the party to the proceedings in the filed appeal in no way

does not comment on the criteria, the consideration of which was the administrative body and the city
identified by the court as crucial for the inclusion of the DNA profile in the National DNA Database.
Given the principle of judicial review of the legality of decisions of administrative authorities would be
it is undesirable for the administrative body to deviate from the legal opinion of the court, except in exceptional cases,
and such a decision would be illegal. This is expressed at the legal level by Section 78 (5) of the Act
No. 150/2002 Coll., the Code of Administrative Procedure, and therefore the administrative body of the first instance was at its
disposal
decision-making is fully bound by the legal opinion of the municipal court in the judgment no. 3 A 86 / 2013-99
which was subsequently confirmed by the judgment of the Supreme Administrative Court ref. 8 As 134 / 2016-38.
The term "necessity" is a vague legal term and in its assessment according to § 79 paragraph 1 of the Act
o Police as a further condition in addition to the connection with the tasks of the police must be taken into account the purpose
each individual processing of personal data by the police, in this case the National
DNA database. Due to the fact that the tasks of the police are defined by the Police Act
too generally, it must be before the decision to insert and store the profile in the National Database
DNA assessed each case individually, especially given the nature of the crime.
Although it no longer uses the provisions of Section 79 (1) of the Police Act as a restrictive criterion for
processing of sensitive data the nature of the crime, as provided by the provisions of § 42g paragraph 3 of the Act
No. 283/1991 Coll., on the Police of the Czech Republic, this criterion is still the most important aspect,
on the basis of which it is possible to define the circle of persons whose profile will be in the National DNA Database
included so that it is not a completely arbitrary and random procedure. The city spoke in the same way
court in judgment no. 10 A 30 / 2010-67, subsequently confirmed by the judgment of the Supreme Administrative
court no. 4 As 168 / 2013-40, to which the party to the proceedings itself refers in the appeal. Nature
criminal offense in this regard is given mainly by the importance of the protected interest, circumstances,
the actual use of the DNA profile to identify the perpetrator
species-specific crime. The Municipal Court in the judgment no. 3 A 86 / 2013-99 emphasized that
that an important criterion for assessing the need to process sensitive data in the National Data Protection Agency

The DNA database is also the seriousness of the crime, consisting mainly in the social type
the harmfulness of the offense, the manner in which the offense was committed and the related probability
leaving a biological trace at the crime scene, recurrence of the attack or recidivism of an intentional criminal offense
activities.
In view of the above, the argument that the police cannot sufficiently accept
takes into account the principle of proportionality, if based on criminological statistics
processes sensitive data of all persons for whom it assesses exclusively the subjective side of the criminal
crime, as this leads to a significant reduction in the mandatory criteria. On this place
the opinion of the municipal court cited in the judgment no. 9 A
92 / 2012-45, as it is taken out of the context of the whole judgment. First, the city court in the above
of the judgment explicitly follows the judgment of the Municipal Court ref. 10 A 30 / 2010-67 and judgment
Of the Supreme Administrative Court ref. 4 As 168 / 2013-40, without in any way indicating that it is his
with the intention to depart from the views expressed in those judgments and, second, in those proceedings
the lawfulness of preserving the DNA profile of the offender who was convicted was assessed
for the crime of fraud according to § 209 par. 1 and 5 let. a) of the Criminal Code, which he should have committed
repeated partial attacks, which means that the protected interest has been repeatedly violated. It was a person
which would probably also meet the above criteria for assessing the need to maintain a DNA profile

in the National Database, and therefore this view cannot be generalized to the processing of any DNA profile
persons. In addition, it should be emphasized that the Supreme Administrative Court in the judgment no. 8 As 134 / 2016-38
he indirectly expressed the view that the intention to commit a crime is in itself a relevant criterion
only in terms of the legitimacy of personal collection, resp. sensitive data pursuant to Section 65 (1) of the Act
about the Police, while in assessing the need for further processing, the assessment is also important
the nature of the offense committed.
The objection concerning the amount of the sanction imposed should be noted that the administrative body has considered all
of them

decisive facts in its determination and duly described in the decision. Sanctions reflect
the nature of the sensitive data, the length of the unauthorized processing of the DNA profile and the professional
the position of the subject in the processing of personal data. The fact that there has been a correction
illegal status and deleting the profiles of two people from the database cannot be assessed as mitigating
circumstance, in particular taking into account the time of their unauthorized processing and execution
remedies not from their own activities, but only in connection with the notification from the Office.
For all the above reasons, the appellate body rejected the party's arguments
and, after an overall examination, did not find the contested decision illegal or incorrect.
He also found no errors in the procedure prior to the extradition of the contested person
decision. Therefore, the appellate body ruled as stated 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, May 11, 2018
official stamp imprint
JUDr. Ivana Janů
President of the Office