OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00EBVXW *

Ref. UOOU- 00179 / 19-38

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:

Appeal of the accused, company XXXXXX, against the decision of the Office for Personal Data Protection Ref. UOOU-00179 / 19-27 of 29 May 2020, is rejected and the contested decision is annulled confirms.

Justification

Definition of things

[1] Proceedings in the matter of suspected breach of obligations pursuant to § 5 para. e), § 11 par. 1 and Section 13, Paragraph 2 of Act No. 101/2000 Coll., on the Protection of Personal Data and on the Amendment of Certain Acts, in connection with the processing of personal data of those interested in the provision of financial services, was initiated by an order of the Office for Personal Data Protection (hereinafter "the Office"), which was XXXXXX ("the accused"), delivered on March 11, 2019. The basis for his issue was a protocol on control ref. UOOU-06436 / 16-165 of 27 April 2018 and other files material acquired by the Office inspector Ing. Josef Vacula during the inspection of file no. UOOU-06436/16 for the accused pursuant to Act No. 255/2012 Coll., On control (control rules), including settlement objections of the President of the Office Ref. UOOU-06436 / 16-172 of 21 September 2018. Against the above

of the order, the accused filed a timely opposition, on the basis of which the order was canceled and the administrative proceedings
continued.

[2] By decision no. UOOU-00179 / 19-9 of May 14, 2019, the accused was found
guilty of committing offenses pursuant to § 45 para. d), f) and h) of Act No. 101/2000 Coll.,
which it should have committed by storing the personal data of those interested in providing financial assistance
services in the order of hundreds of thousands of data subjects for a period longer than necessary for the purpose of their processing,

further by failing to inform those interested in providing financial services of which particular
their personal data may be disclosed to entities and that it has not been processed
no internal directive or otherwise documented protection measures
personal data. A fine of CZK 250,000 was imposed on her for the tort / delict.

[3] The defendants filed a lawsuit against the decision on 30 May 2019 through its legal
representative first blanket dismissal, which then, at the request of the administrative body of the first
degree, on 9 July 2019.

[4] The Appellate Body examined the contested decision and concluded that the Administrative Authority
The first instance did not sufficiently find out the number of processed data or the persons concerned, when their
the decision was based solely on the marketing communications and advertising statements of the accused. President
Therefore, on 20 December 2019, by its decision no. UOOU-00179 / 19-19 previous
annulled the decision and remanded the case to the administrative authority of the first instance for a new hearing.
Subsequently, on 27 February 2020, a corrective decision no. UOOU-00179 / 19-23, since
in the operative part of the decision, the administrative body made a writing error by incorrectly marking the canceled decision.

[5] In the new decision no. UOOU-00179 / 19-27 of 29 May 2020 administrative body
of the first instance again stated the commission of offenses pursuant to § 45 par. d), f) and h) of the Act

No. 101/2000 Coll. Due to the fact that the administrative body of the first instance failed to succeed evidence of the number of data subjects concerned, this could not be the case assessed when determining the amount of the sanction, and therefore a new fine of CZK 175,000 was imposed.

[6] The defendant filed a complaint against this decision on 15 June 2020 through her lawyer an appeal in which she stated that she would justify it within 10 days. Administrative body of the first on 17 June 2020 (received the same day) called on the accused to days of receipt of this invitation. On July 14, the accused requested an extension deadline to justify the dissolution by 19 July 2020, but this deadline was not met either.

[7] Although the shortcomings of the decomposition were not remedied in the original nor within the extended period, the appellate body examined the contested decision in its entirety, including the process that preceded its release, while taking into account the additional justification of 18 August 2020.

Decomposition content

[8] In the dissolution, the accused declared the decisions to be clearly illegal and factual incorrect, finds obvious errors in the procedure of the first instance body and therefore proposed annul the contested decision.

[9] In the grounds for the appeal, the accused commented on the delay administrative proceedings initiated since the issue, resp. acquisition of legal force of the protocol on control ref. UOOU-06436 / 16-165 of 27 April 2018.

[10] The accused also referred to the administrative proceedings of file no. UOOU-00313/19, which similarly as the decision under review now responded to the conclusions of the inspection of file no. stamp UOOU-06436/16, when she stated that she had acted with a legitimate expectation that any deficiencies identified during the inspection were subject of that "sanction" procedure, which provided all of them cooperation. The accused also stated that she had committed errors other than those which were the subject of the above administrative procedure, it was not even informed. At the same time, the accused raised

objection of limitation of liability and prosecutability of the offense, but its argument in this
meaning has not developed in any way.

[11] The defendant also commented on paragraph 1 of the contested decision, stating that
processed personal data with the consent of the data subjects, which was limited in time
for 10 years, the purpose of the processing was to be the repeated mediation of short-term
loans. The defendants consider the contested decision to be unreviewable, since it is nowhere in it
it is not stated when the accused's right to handle the personal data of the candidates expired
for a loan. According to the accused, the purpose of the processing and the fact that it was granted are clear from the consent
for re-use. A situation where those interested in financial services would have to award repeatedly
consent to the processing of personal data, the accused considers nonsense. Conclusion of the administrative
authority of the first instance on the processing of personal data after its purpose has passed, so it is not according to
accused correct. At the same time, the Office was to base its assessment of the seriousness of the offense
regarding the number of entities involved in the advertising slogans accused, which he considers in terms of
factual findings.

[12] The accused also reiterated the Office's conclusion that the entity was not sufficiently informed
the identity of third parties to whom their personal data may be disclosed. To
Specifically, on 16 December 2016, the website was http: // XXXXXX
updated with a list of recipients of personal data, referring to the previously attached
the deploy.log file, which is supposed to prove the content of the pages as of the above-mentioned date, and the file
list.html containing the complete list of recipients. Thus, the verdict of I. point 2 cannot be according to the accused
true.

[13] As regards the first paragraph of the first paragraph of the contested decision, the defendant stated that
processed personal data in accordance with § 13 of Act No. 101/2000 Coll., and that the transfer
considers the absence of an internal directive to be a purposeful legal formalism, as the law does not impose it
the obligation to adopt an internal directive but to take technical and other appropriate measures
to secure personal data.

[14] Finally, the defendant requested that, should the contested decision not be annulled,

she was pardoned for the sanction imposed, which she justified on the grounds that the Office had already imposed a fine on her

in the total amount of CZK 110,000, which she paid and subsequently fulfilled all enforced obligations.

She also stated that another fine of CZK 175,000 would be liquidation for her, which she proved to her own

tax return for 2019, which shows that it is in a significant loss. Moreover, accused

stated that the imposition of fines should not aim at the liquidation of businesses.

Assessment by a second instance body

[15] The arguments contained in the appeal are almost identical to those already mentioned by the accused

earlier, and with which the appellate body has already dealt with in the decision of the President of the Office ref. UOOU-00179 / 19-19 of 20 December 2019, yet the appellate body dealt with them again.

[16] First, the Appellate Body dealt with the alleged delay between the issuance of the report

on control ref. UOOU-06436 / 16-165 of 27 April 2018 (hereinafter referred to as the "Inspection Protocol")

and the commencement of this administrative proceeding on 11 March 2019. The Office shall, after the issuance of the minutes

on inspection first addressed the defendant 's objections to the audit findings, which

were settled on 21 September 2018 (ref. UOOU-06436 / 16-172). Subsequently, he was on October 10, 2018

issued order no. UOOU-09378 / 18-3, which imposed remedial measures on the accused

defective condition detected by the inspection. As the accused did not comply with the measures imposed, she was

by order of 18 January 2019 ref. UOOU-00313 / 19-9 imposed a fine, taking proceedings

continued until May 27, 2019, when the decision of the President of the Office ref. UOOU-00313 / 19-23, by which the imposed fine was confirmed. Although these proceedings could have taken place

with this administrative procedure at the same time, the Office was primarily concerned with being as soon as possible

the defective condition found by the inspection was removed and only subsequently, within the statutory period, it initiated

further proceedings,

which resulted in the imposition of sanctions for the infringements found in the inspection report. Accused
the said delay does not constitute a procedural error of the Office, which, moreover, from the objection
accused or not.

[17] As mentioned above, the administrative proceedings of file no. UOOU-00313/19, similar to
contested decision, followed up on the inspection carried out by the Office's inspector Ing. Joseph
Vaculou sp. UOOU-06436/16 and was based on the shortcomings identified by him. In the case of administrative
management sp. UOOU-00313/19, however, the main subject of the proceedings was non-compliance with the measures
to remedy imposed by the Office inspector by order of 10 October 2018, ref. UOOU-09378 / 18-
3 (copy also kept under ref. UOOU-00313 / 19-2), for which a fine of
CZK 100,000. The subject of proceedings file no. UOOU-00313 / 19-2 was a completely different act, which
cannot be confused with the conduct under consideration. In the case of proceedings for the imposition of remedial measures
sp. UOOU-09378/18 can then be pointed to a different purpose from the current proceedings. Saving
remedial action cannot be taken in any way with the application of liability for the offense
to confuse or combine, as the aim of each proceeding is a completely different matter. While sanctions
punishes the perpetrator for the offense committed and thus performs mainly a preventive and repressive function, meaning
remedial action is the restoration and rectification of the existing illegal situation. Saved
remedial measures are therefore not possible, especially with regard to their meaning and reparative nature
to recognize the criminal dimension within the meaning of the European Convention for the Protection of Human Rights and
Fundamental Freedoms
freedoms, which would create a barrier ne bis in idem, as it does not meet the so-called Engel criteria
established by the European Court of Human Rights (cf. ECtHR Engel v. the Netherlands
of 8 June 1976, Complaint No. 5100/71 and others).

[18] As regards the alleged limitation period, the assessment of the limitation period is
essential that Act No. 101/2000 Coll. allows a fine to be imposed for the tort / delict in question
up to CZK 5,000,000, as the limitation period in such a case is, according to the provisions of § 30 letter b)
Act No. 250/2016 Coll., on liability for misdemeanors and proceedings against them, 3 years from

following the day on which the offense was committed. The administrative authority of the first instance in this context he correctly concluded that the offenses committed by the accused had been his own by nature the offense lasting, resp. continuing when the day of the offense is committed considered the day of termination of the illegal situation, resp. last attack on a protected interest by law. If the appellate body at this point disregards the fact that it has so determined the limitation period was subsequently interrupted by the issuance of the order and further challenged decision, as well as the length of time without interruption due to the timing of the offenses in the operative part of the decision clearly supports the conclusion that the objection of limitation cannot be complied with in relation to any of the infringements under discussion.

[19] Next, the Appellate Body dealt with paragraph 1 of the contested decision, according to which the accused had to violate the obligation stipulated in § 5 par. 1 let. e) of Act No. 101/2000 Coll. In this context, the accused reiterated the opinion expressed on the purpose several times in the proceedings processing, which was to be the re-submission of short-term loan intermediation offers clients, and this should be limited to 10 years. The consent in question was an object review as part of the objections to the audit findings in the inspection report when the accused followed the same line of argument. The appellate body finds no reason in this regard

to deviate from the previously expressed conclusion, namely that the alleged purpose of the text of the consent does not follow. The quality of the consent must be assessed in relation to the objectively determined purpose, as it is presented to the data subjects and not from the point of view of the accused, since only in this way can sufficient information be ensured for the data subjects who can subsequently do so freely decide whether to allow such processing. The appellate body fully agrees with the opinion of the administrative body of the first instance that from the submitted consent to processing personal data of the applicant shows that the purpose of processing is in addition to the transfer of personal data financial service providers ("providers") in order to prepare an offer

granting credit only general marketing address. Accused of alleged authorization
retransmission of personalized commercial communications containing an offer for
specific data subjects to arrange other specific loans then from the text
consent does not follow. If the accused processed the personal data necessary for the processing
tenders for the conclusion of a contract for the provision of financial services between the applicant and the provider
even after they have been handed over to the providers, it must be stated that there was no absence for this
legal title, as the original one has expired and for the purposes of personalized marketing
it could not be used. The contested decision states that '… purpose
processing of personal data at least in the case of the category of data enabling processing
offers of financial products shall cease to exist by the transmission of such data to providers ',
which clearly shows that after the transfer of personal data to financial service providers, they had
the personal data must be destroyed. The accused could further in accordance with the granted
consent to process only the data necessary to send general marketing messages.
Re-approval of service intermediaries when completing loan applications
considers the appellate body to be good practice, not nonsense, as perceived by the accused. Consistent
with the conclusions of the administrative body of the first instance, it can be concluded that the accused processed
personal data for longer than necessary.
[20] Moreover, under the conditions considered, such processing would also be contrary to the principle of precision
processing of personal data, as in addition to the fact that the accused for this purpose keeps a wide range
a range of personal data that changes naturally over time (eg data relating to
the amount of monthly income, months worked, number of children, length of stay at the address, need to
Also note that due to the recurrence of the loan (ie, the situation to grant
at least one loan has probably already taken place), there is also a change in the area
processed data relating to the debts and expenses of the client, which are for the assessment of the application
by financial providers is undoubtedly one of the key factors. In case of absence
the mechanism for updating the data could thus be the credit intermediation offer itself

be obsolete and insignificant at the time of delivery. Finally, it should be recalled that

the precondition for the correctness of the consent is, in particular, its freedom of granting and information. If so

the data subject is free to decide whether to consent to the processing of his or her data

made such a decision with sufficient knowledge of the characteristics of the intended processing.

Reproduction is an integral part of any transfer of personal data to the recipient

existing personal data (as these subsequently exist on two to some extent

independent places), while at the same time increasing the number of people in possession

personal data concerned, which can undoubtedly be seen as a factor that significantly increases the risk

for the data subject's rights to protection of his personal data and privacy as such. Proper

informing of possible beneficiaries

it must therefore be considered a necessary component

information, as provided for in the provisions of § 5 paragraph 4 and § 11 of Act No. 101/2000 Coll.

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[21] Nor later Regulation (EU) 2016/679 of the European Parliament and of the Council of

April 27, 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 (hereinafter referred to as the "General Regulation") on

this does not change anything. Similar to Act No. 101/2000 Coll. considers as key parameters

consent, in particular the freedom to grant it, its specificity, information and clarity (see

recital 32: “Consent should be given by a clear confirmation, which is an expression

free, concrete,

informed and unambiguous consent of the data subject to

processing of personal data […] "), and recital 42:" In order to ensure that consent is

the data subject should at least know the identity of the controller and the purposes of the processing for which he or she is

In addition, it is only possible to refer to the opinion of WP29, which it submits

in the Guidelines for Consent under Regulation 2016/679, under point 3.3.1, an interpretation as necessary

specifications of all entities to whom personal data are to be disclosed and which have such data

subsequently processed as other administrators, by their name.

[22] According to the submitted consent to the processing of personal data (see eg statement lawyer accused of 1 November 2016), as well as according to the wording of the consent, as it was printed by inspectors within the procedure pursuant to Act No. 255/2012 Coll. from the website accused (see official record ref. UOOU-06436 / 16-78), a complete list of possible beneficiaries should be located at www.XXXXXX. At the same time from the view of the subject the website and the final conclusions of the inspection (see Part II, point 11 of the inspection report), that the websites in question do not contain such information. Due to the fact that consent other than just a link to the website www.XXXXXX no further information in this respect did not contain, respectively. was not the identity of all potential beneficiaries of it obvious, we can only come to the conclusion reached by the administrative body of the first the contested decision, namely that the defendant infringed an obligation laid down in § 11 paragraph 1 of Act No. 101/2000 Coll.

[23] In this context, the Appellate Body reassessed the evidence submitted accused in the previous appeal, to which he now refers. The deploy.log file is a text file file editable in any text editor whose properties indicate that it was on Monday July 8, 2019 at 12:07:56 pm, and its contents say nothing about the content of the website www.XXXXXX, where according to the information contained in the consent processing of personal data should find a complete list. According to the accused, he has the log in question documents the content of the website http: // XXXXXX. Not only would that be a claim the existence of a list of recipients at http: // XXXXXX did not correspond to the text of the consent (which refers to www.XXXXXX), which is moreover in terms of assessing the quality of information relevant, the alleged facts are not apparent from it either. From the logo in question it does not in any way imply that the files processed by the script should relate to the content website http: // XXXXXX, and at the same time it is not even clear whether the file list.html is processed corresponds to the provided list.html file within the decomposition, the properties of which moreover follows,

that was modified on Thursday, July 4, 2019 at 7:39:32 PM. Given everything above
including that she was accused in a statement of 14 May 2018 containing
objections to the inspection report with the audit conclusion on information deficiencies
she agreed, stating that she was aware of it and was currently working on redress
the appellate body concluded that the alleged facts were not even submitted
the evidence has no bearing on the correctness of the conclusion of the first administrative authority. At the same time
it is clear that at the date of objection to the inspection report, the defective condition was still present.
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[24] As regards the scope of the findings regarding the number of illegally processed personal data
The Appellate Body finds that that assessment no longer contains the contested decision.
As the administrative body of the first instance failed to meet the number of entities involved
this fact was not taken into account as a factor of gravity
offense and for this reason the imposed sanction was reduced from the original CZK 250,000 to
175,000 CZK.
[25] The Appellate Body also examined paragraph 3 of the contested decision, according to which it had
accused of violating the obligation pursuant to Section 13, Paragraph 2 of Act No. 101/2000 Coll. It is from the file material
according to the appellate body, it is clear that the accused was repeatedly called during the inspection
to document technical and organizational measures to ensure the protection of personal data against them
abuse, but there was no evidence from the accused, except for a few allegations
any documentation of these measures is submitted. As follows from Part II. point 12 of the Protocol
on inspection, the accused was accused of violating the provision in question already within the inspection
management. The obligation of proper security is enshrined in Section 13 of Act No. 101/2000 Coll. Provision
The first paragraph of that paragraph is of a general nature and lays down the obligation to accept
adequate measures (which can in principle be divided into technical and organizational measures).
The obligation formulated in this way is supplemented and elaborated in the following paragraphs
and specified, including the inclusion of the obligation to keep proper documentation of the measures taken

according to the provisions of § 13 paragraph 2 of the cited Act. It is thus a legally established obligation to create
together with another inseparable set of measures aimed at ensuring confidentiality and integrity
processed data. After all, without proper documentation, no further action is possible
evaluate in relation to each other, revise or otherwise assess the adequacy of the adopted
security levels. This is reflected in the very factual nature of the tort expressed in § 45
paragraph 1 (a) h) of Act No. 101/2000 Coll., which, within the framework of non-implementation of security measures
explicitly refers to § 13 as a whole, and not only to § 13 par. 1 [cf. provision
letter and (e) of the same paragraph]. The real breakthrough of security and misuse of personal data so
is not a necessary precondition for committing the offense in question, and any
proven abuse, on the other hand, could justify the use of much tougher sanctions.
[26] With regard to the sanction imposed, the Appellate Body states that a fine of
CZK 100,000 (file no. UOOU-00313/19) for non-compliance with imposed measures to correct defective
despite the extension of the corrective action deadline. Another fine of
CZK 10,000 (file no. UOOU-01096/19) was imposed on the accused in accordance with the law
No. 480/2004 Coll., on certain information society services and on the amendment of certain acts
(Act on Certain Information Society Services), for sending unsolicited business
communication. We can agree with the accused's objection that the purpose of the fine is not the liquidation of business
However, it must be borne in mind that administrative sanctions must not only serve a function
preventive but also repressive, which means that the sanction imposed must be committed by the offender
feel as a non-negligible damage - in this case as a negative impact on your
property sphere. From the resolution of the enlarged Senate of the Supreme Administrative Court of 20 April
2010, No. 1 As 9 / 2008–133, it follows that: “[t] he will therefore depend primarily on the party to the proceedings,
whether it expresses its interest in ensuring that the fine imposed has no liquidating effect on it, by:
provide the administrative authority with basic information about his personal and property relations and these
they shall also provide credible evidence or enable the administrative authority to verify their veracity. "
The accused submitted a corporate income tax return for the 2019 tax period

the notes to the financial statements as at 31 December 2019, which show that

As at 31 December 2019, it reported negative equity of CZK -977,000 (total liabilities)

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CZK 10,246,000) and the profit for the given accounting period CZK -5,067,331. Authenticity

However, the documents submitted cannot be reliably identified and the accused in the collection of documents of the financial statements

are not published. As also stated by the Supreme Administrative Court in the judgment of 14 August 2014 No. 10 Ads 140 / 2014-58: '[i] n the case of imposition of a sanction and assessment of its liquidation character the business company cannot be based solely on the profit itself, but also on others facts such as the turnover of the company and its business activity, which help to create a closer idea of the economic power of the entity. ”The loss-making economy itself is thus in itself does not prove the liquidation nature of the fine. One of the main indicators of business economic strength the company's turnover, and the documents submitted on the defendant's financial situation show that that the annual total of its net turnover for 2019 was CZK 31,559,600. In addition to the above, it is possible to add that, pursuant to Article 83 (4) of the General Regulation, a fine of up to 2% may be imposed on an undertaking total annual worldwide turnover for the previous financial year. It is therefore based on the annual turnover, not from the company's profit. As regards the fine imposed, the appellate body in particular recalls that this could have been in accordance with Section 45 (3) of Act No. 101/2000 Coll. measured up to up to CZK 5,000,000. In reality, therefore, it was imposed at the very lower limit of the possible rate (in the amount of 3.5%) and the Appellate Body fully agreed with the reasoning of this assessment in the contested decision. In that regard, the Appellate Body also points out that the accused may according to Act No. 280/2009 Coll., the Tax Code, to request a delay or to allow permission to dismantle payment of a fine on installments. At the same time, the appellate body adds that the accused did not file a petition at the opening of insolvency proceedings, it can therefore be assumed that he is not in bankruptcy. With regard to everything the appellate body considers that the liquidation nature of the fine has not been substantiated.

[27] The defendant's argument was therefore rejected by the Appellate Body and, after an overall examination

found no maladministration in the procedure of the administrative body of the first instance

illegality of the decision.

[28] For all the above reasons, 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, October 8, 2020

official stamp imprint

Mgr. Jiří Kaucký

chairman

(electronically signed)