Ref. SPR-2298 / 10-61

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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 21 June

2016 according to § 152 par. 5 let. b) of the Administrative Procedure Code as follows:

Dismissal of the party to the proceedings, the Czech Republic - Ministry of Education, Youth and Sports, se

registered office Karmelitská 7, 118 12 Prague 1, IČ: 00022985, filed against the decision of the Office for

personal data protection ref. SPR-2298 / 10-56 of 27 April 2016, is rejected and contested

the decision is confirmed.

Justification

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

and e) of Act No. 101/2000 Coll. in connection with the processing of personal data of children, pupils

and students was notified by the Office for Personal Data Protection (hereinafter "the Office"),

which was a party to the proceedings, the Czech Republic - the Ministry of Education, Youth and Sports

('the party to the proceedings'), received on 9 April 2010. The basis for initiating the proceedings was

control protocol

INSP1-0690 / 09-21 / BYT dated December 3, 2009, taken

Inspector of the Office RNDr. Kamila Bendová, CSc., Including file material

collected during the inspection carried out at the party's premises from 5 February to

November 30, 2009, and the decision of the President of the Office on objections to the Control Protocol

INSP1-0690 / 09-24 of 19 March 2010.

On 30 June 2010, the administrative body of the first instance issued Decision No. SPR-2298 / 10-15,

by which a fine of CZK 800,000 was imposed on a party to the proceedings for committing administrative proceedings

of torts according to § 45 par. 1 let. c), d) and e) of Act No. 101/2000 Coll. The party against the proceedings
to that decision, which the President of the Office, by his decision of the SPR
2298 / 10-22 of 1 November 2010 rejected.
Subsequently, the party filed a lawsuit with the Municipal Court in Prague, which upheld the lawsuit
and the judgment no. 9 A 1 / 2011-93 of 31 March 2015 the above-mentioned decision of the President
The Office annulled the appeal and returned the case to the Office for further proceedings.
The President of the Office by decision no. SPR-2298 / 10-34 of 17 September 2015
Decision of the Administrative Authority of the First Instance No. SPR-2298 / 10-15 of 30 June 2010
and referred the case back to the administrative authority of the first instance for consideration
to deal with the factual and legal assessment of the data processing in question from the point of view of the individual
the facts of the corresponding administrative offenses and a sufficient statement of reasons for the decision
concerning the assessment of the party's activities.
On 2 December 2015, the administrative body of the first instance issued decision no. SPR-2298 / 10-44
which to the party to the proceedings for committing administrative offenses pursuant to § 45 par. c), d) and e)
Act No. 101/2000 Coll. imposed a fine of CZK 800,000. The decision was challenged again
by an appeal of the party on the basis of which the President of the Office on 18 February 2016
by decision no. SPR-2298 / 10-51 annulled the contested decision again and remanded the case to the Administrative Court
authority of the first instance for a new hearing.
In the new decision no. SPR-2298 / 10-56 of 27 April 2016, the administrative body arrived at
The Court of First Instance concluded in paragraph I to conclude that the party by processing sensitive
personal data indicating the type of disability, the type of other disability
and the symptom of multiple disabilities, violated the obligation set out in § 9 of the Act
No. 101/2000 Coll., thereby committing an administrative offense under § 45 para. e) of the Act
No. 101/2000 Coll. He imposed a fine of CZK 200,000 on a party to the proceedings for this administrative offense.
No further violation of the law was proved to the party to the proceedings (statements of the 2nd and 3rd decisions).
According to the contested decision, the factual nature of the administrative offense was fulfilled by:

the party to the proceedings collected sensitive data on the health status of specific pupils or students.

The data were collected in two separate files, with one pupil or

student, similar data were collected in both files. He was in one of the files

the entity concerned is identified by a birth number, in the second file the birth number was replaced

the pupil's code designed to uniquely identify him / her and to avoid duplication. To such

the collection of sensitive data under the contested decision was not available to the party

no legal title from the exhaustive list specified in § 9 of Act No. 101/2000 Coll.

The decision was delivered to the party on April 27, 2016 and was on May 12, 2016

The appeal of the party to the proceedings was delivered to the Office via the data box.

The dissolution of the party to the proceedings is conducted only against the statement according to point I. above

decision, the party seeks the annulment of the decision in so far as it relates to that decision

point, ie to the statement of the decision to commit an administrative offense under § 45 para. E)

Act No. 101/2000 Coll. The party to the proceedings states that, in its opinion, this statement is valid

not only on an incorrect factual but also on a legal assessment of the case, as it is a party to the proceedings

alleged that he never actively did, ie that he processed sensitive data. Here again

It claims that it did not collect or contact sensitive data because it contained data

information about the disability was passed on to him from schools and further processed

in an anonymized form, as required by Section 28, Paragraph 5 of Act No. 561/2004 Coll.

Furthermore, the party to the proceedings objects to the extensive interpretation of the identification by the Office by reference

to

a combination of data which a party holds or may obtain.

He also points out that "anonymised" data has not been shown to link or

he combined and had not even been shown to do so.

According to the party, the reduction of the anonymised file reduced the probability

possible interconnection of both files, further states that data sentences (or data range)

were not completely identical and did not have a file in place to identify a specific one

entities. Thus, the basic condition resulting from § 4 letter a) of the Act

No. 101/2000 Coll., that the data subject is considered to be designated or identifiable, if it can be directly

or indirectly identify.

He also argues that the substance of the administrative offense presupposes active conduct

participant (ie processing of sensitive data). Finally, the appellant refers to

decision of the Municipal Court in Prague and states that it is not in the contested decision

made sure that the conduct of the party to the proceedings would undoubtedly fulfill the facts

the nature of the administrative offense. According to the party to the proceedings, the Office did not settle properly

with the arguments of the party to the proceedings and thus violated the obligation pursuant to Section 50 of the Administrative

Procedure Code and thus

§ 3 of the Administrative Procedure Code. Defects that led to the annulment of the decision on appeal by the Municipal Court

in Prague and for which the case was returned for a new decision, were not removed. Again

states that he has always acted in accordance with the law and in the event that compliance is proven

the facts of the administrative offense according to § 45 par. 1 let. e) of Act No. 101/2000 Coll.,

refers to the ground for liberation pursuant to Section 46 (1) of this Act.

The appellate body reviewed the decision in its entirety, including the previous process

its release, and reached the following conclusions.

On the basis of the facts set out in the contested decision, the appellate body considers that:

proven that it was personal data and, in the case of health data,

status of data subjects for sensitive data in the sense of § 4 letter b) of Act No. 101/2000 Coll. Conclusion

of the administrative body of the first instance is based on the valid legal regulation and in its justification

the appellate body did not find any fault.

The party collected sensitive data in a file without a direct identifier, but to

a similar range of data was collected in two files for each subject (pupil),

while one file also contained the birth number, and the other file contained this data without

birth number, which has been replaced by a special pupil code (as a unique identifier

in order to avoid duplication).

According to the Appellate Body, the procedure chosen by the party to the proceedings cannot be considered as

anonymisation

in the sense of Act No. 101/2000 Coll., because by comparing these two sets, which are both

under the control of a party to the proceedings, the persons concerned may be identified without incurring extraordinary costs

resources or efforts. Neither of these data sets can be said to be so

it was anonymous data, for which according to § 4 letter c) of Act No. 101/2000 Coll. possible

consider only such information as either in its original form or after it has been made

the processing cannot be related to the designated or identifiable data subject.

Interpretation of the term personal data, resp. determination and identifiability of the natural person who in the assessed

the case was applied by the administrative body of the first instance, the party to the proceedings in the appeal describes as so

extensive that, as a result, virtually no data could be processed, not even

data marked with an insignificant code. The appellate body states that the interpretation of the term

personal, resp. sensitive data, which means information that may be a controller or other

assigned to a particular person only using other means, is fully responsible

relevant legislation. In addition to § 4 letter a) of Act No. 101/2000 Coll. it is necessary to refer

in particular Article 2 (a) (a) in conjunction with Recital 26 of the Directive of the European Parliament

and Council Directive 95/46 / EC on the protection of individuals with regard to the processing of personal data

and on the free movement of such data. The European legislator has limited this definition to the notion

determinability did not include theoretical or academic possibilities of identifying a specific person,

states that these must be means which the administrator or a third party can reasonably be able to do

use. In this case, the party to the proceedings has two databases at its disposal

by comparison without extraordinary effort can identify a particular person. According to

In the opinion of the Appellate Body, this is without a doubt a personal,

resp. sensitive data on minimally identifiable persons. This conclusion is, moreover, consistent with the interpretation

administrative courts (cf. the judgment of the Supreme Administrative Court of 23 August 2013

Ref. 5 As 158 / 2012-49 or the judgment of the Supreme Administrative Court of 27 February 2014

Ref. 4 As 132 / 2013-25), as well as doctrines (eg Kučerová, A., Nováková, L., Foldová, V.,

Nonnemann, F., Pospíšil, D .: Personal Data Protection Act. Comment. 1st edition. Prague:

identified persons should

C. H. Beck, 2012, or Novák, D. Personal Data Protection Act and related regulations.

Comment. Prague: Wolters Kluwer, 2014.).

Unlike the party to the proceedings, the appellate body does not consider that this interpretation is disproportionate

extensive. Only the application of the law to the specified extent can protect the rights of the persons concerned

as defined in § 1 of Act No. 101/2000 Coll. and in Article 1 of Directive 95/46 / EC. if

the opposite interpretation has been adopted, according to which the legislation governing the rules for

the processing of personal data did not apply to a set of information which, although the controller very much

easily (by simply comparing it with another file that is legally and technically available,

because, for example, it is under its administration, it is publicly available, etc.) it can connect with specific people,

however, the data in this one file alone are not sufficient to identify humans, there has been

would unduly and disproportionately restrict the scope of personal data protection law.

Files of information that can be easily, at the reasonably foreseeable effort of the administrator or

other people connected with unambiguously

so they were exempted

from the scope of Act No. 101/2000 Coll. and anyone could dispose of them freely. Such

the conclusion clearly does not correspond to the intention of the Czech or European legislator.

In favor of the above, it can also be argued that in this case, everyone

the pupil or student received an identification code instead of a birth number and they were in the following years

additional data are assigned to the already collected data of individual subjects, namely on

based on this code. In other words, each pupil or student was assigned a code

clearly different from all other pupils and students, so to speak

about anonymous data also seems to be incorrect from this point of view.

Nor can the party's objection that he did not process sensitive data agree. Party

the proceedings argue that the factual nature of the administrative offense in question presupposes

active action of the responsible person consisting in data processing. The appellate body refers to

provisions of § 4 letter e) of Act No. 101/2000 Coll., which stipulates that for processing

considers the collection and storage of personal data itself. As mentioned above,

the party evidently processed (collected and stored) the data files which

they also contained sensitive data. The files were further treated in the sense that they were supplemented

and updated, it was clearly a data processing within the meaning of the law. According to

appellate body here the party to the proceedings clearly confuses the concept of use and processing

data, which are certainly not synonymous. Data processing is a much broader concept,

which includes operations such as the collection or storage of data, not just theirs

active use. As already stated, the party systematically and for a specific purpose

collect and further store data concerning designated or identifiable natural persons,

on data processing in the sense of § 4 letter e) of Act No. 101/2000 Coll. so clearly it went.

Appellate body due to the fact that sensitive data was collected and stored

indicating the type of disability, the type of other disability and the symptom

multiple defects without the party having to do so

documented the consent of the data subjects or fulfilled any of the other legal titles according to § 9 letter b)

to i) of Act No. 101/2000 Coll., considers that the factual basis has been proved to the party to the proceedings

administrative offense according to § 45 par. 1 let. e) of this Act. This conclusion of the Appellate Body

is also based on the statement of the Municipal Court in Prague, which on page 14 of the judgment no. 9 A 1 / 2011-

93 of 31 March 2015 stated that “for the fulfillment of the factual substance of the administrative offense under

§ 45 par. 1 let. e) of the Act in conjunction with the provisions of § 9 of the Act was sufficient to prove that the plaintiff

also processes sensitive data on pupils and students (ie on their disability) without

consent of these data subjects and that there are no exceptions for such processing according to § 9
letter b) to i) of the cited Act ”.
In the contested decision, the administrative authority of first instance stated in operative part I
received from the party to the proceedings, as well as the approximate numbers of data subjects whose sensitive personal
data
have been processed. In that regard, the appellate body states that from the materials of the party where

the numbers of entities for the individual years 2006 to 2009 were given, it was not possible to state the exact ones
the number of data subjects with sensitive data, as some subjects appear both in the school records,
from which the pupil moves to a higher level, as well as in the records of the new school to which the newly admitted pupil
whether the student started. However, the contested statement can still be considered sufficiently definite
and unambiguous.
The party 's arguments concerning possible liberation within the meaning of Section 46 (1) of the Act
No. 101/2000 Coll. the administrative authority of the first instance has already commented, concluding that
there were no liberation reasons in the case at hand. The Appellate Body agrees with this conclusion,
as it has not been established that the party took all possible precautionary measures
infringement. After all, if the participant does not find not only in his activity
violation of Act 101/2000 Coll., but even data processing as such, can hardly be at the same time
argue that he made every effort to process the data (to which according to his
opinion does not occur at all) took place in accordance with the law. Such an argument is obvious
internally contradictory.
The appellate body also dealt with the sanction that was involved in the proceedings for violating the law
saved. In determining the amount of the sanction, the administrative body of the first instance took into account both
aggravating
circumstances as well as mitigating circumstances. The amount of the sanction was also duly justified
provided that the sanction was reduced to an amount which, according to the Appellate Body, corresponds to the scope

sensitive personal data which have been unlawfully processed.

In conclusion, the appellate body states that the Municipal Court in Prague did not oppose the commission either

administrative offense by the party to the proceedings, but requested clarification

legal features of the factual substance of the administrative tort according to § 45 par. 1 let. e) of the Act

No. 101/2000 Coll. According to the Appellate Body, the decision in the case of the I. fulfillment statement

legal features of the factual substance of the administrative tort according to § 45 par. 1 let. e) of this

the law managed to prove.

On the basis of the documents gathered and the above facts, the appellate body decided

as stated in the operative part of the 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, June 21, 2016

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman