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Ref. UOOU-04225 / 16-12

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 § 10 and § 152 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided on 12 August 2016

according to § 152 par. 5 let. a) in connection with § 90 par. 1 let. a) of Act No. 500/2004 Coll. thus:

Decision of the Office for Personal Data Protection No. UOOU-04225 / 16-6 of 17 May

2016, which was a party to the proceedings, the statutory city of Pilsen, with its registered office in the square

Republiky 1/1, 301 00 Plzeň - Vnitřní Město, IČ: 00075370, in connection with processing

personal data of applicants for the conclusion of a lease agreement concerning housing units in

ownership of the city, a fine was imposed for breach of the obligation set out in § 5 para. d)

Act No. 101/2000 Coll. and thus committing a tort according to § 45 par. c) of the Act

No. 101/2000 Coll. in the amount of CZK 18,000, is canceled and the proceedings are stopped.

Justification

The administrative proceedings were initiated by an order of the Office for Personal Data Protection (hereinafter referred to as

the "Office"),

which imposed a fine on the statutory city of Pilsen for committing the proceedings

administrative tort according to § 45 par. 1 let. c) of Act No. 101/2000 Coll. a fine of CZK 20,000

and the obligation to pay the costs. That order was served on the party on 15 April

2016.

The basis for initiating the proceedings was the inspection protocol ref. UOOU-04736 / 14-7 of 14 October

2014 acquired pursuant to Act No. 101/2000 Coll. and Act No. 255/2012 Coll., on control (control

Rules), Inspector of the Office JUDr. Jiřina Rippel as part of the inspection carried out at the participant's premises

proceedings from 18 June to 13 October 2014, including the file collected

during this inspection, as well as the inspection report ref. UOOU-03739 / 15-16 of 1 February

2016 acquired by the Office's inspector PhDr. Petr Krejčí as part of an inspection carried out

at the party to the proceedings from 16 December 2015 to 1 February 2016, including the file

collected during this inspection, and the settlement of objections to the audit findings

President of the Office Ref. UOOU-03739 / 15-20 of 21 March 2016.

On 21 April 2016, the Office received a statement of opposition from the above

order. In accordance with Section 150 (3) of the Administrative Procedure Code, the order was canceled by the filed opposition

and the administrative body continued the administrative proceedings.

On 17 May 2016, a decision was issued no. UOOU-04225 / 16-6, which was the participant

proceedings for committing an administrative offense pursuant to § 45 para. c) of Act No. 101/2000 Coll.,

in accordance with the provisions of Section 45, Paragraph 3 of Act No. 101/2000 Coll., a fine of

CZK 18,000 and the obligation to reimburse the costs of the proceedings.

The tort / delict was found to be a party to the proceedings in connection with the processing

personal data of applicants for the conclusion of a lease agreement concerning housing units in

ownership of the statutory city of Pilsen as the administrator of personal data according to § 4 letter j) of the Act

No. 101/2000 Coll. processed personal data at least from 1 January 2014 to 9 July 2014

the exact unidentified number of data subjects, to the extent of the information that the criminal record

the applicant does not contain information on conviction for intentional crime, as well as sensitive data, to the extent

information that the extract from the applicant's criminal record contains information on a conviction for an intentional criminal

offense

act, thereby violating the obligation set out in § 5 para. d) of Act No. 101/2000 Coll., ie

the controller's obligation to collect personal data corresponding only to the specified purpose

and to the extent necessary to fulfill the stated purpose.

Against the decision of the administrative body of the first instance ref. UOOU-04225 / 16-6 was submitted by the participant

proceedings through its legal representative timely dismissal, delivered to the Office on

May 31, 2016

In the appeal, the party argues that the party is sanctioned for

procedure according to the original internal guidelines in force at the time of the first inspection. The party to the proceedings was

warned of this incorrect procedure during the first inspection. Therefore, during the inspection

to amend the party's internal guidelines. According to the amendment of the directive QS 63-05 and further

instruction QI 63-05-09, which was approved by the Pilsen City Council on 14 August 2014 and whose

The effective date is set for September 1, 2014, the applicant for the apartment rental no longer has to apply

contain an extract from the criminal record. Those interested in renting an apartment, according to point 5.4.1.2.1 must enclose

on request a solemn declaration of himself and all other obligated persons (other possible joint

tenants), which will state that their extract from the criminal record does not contain information

on conviction for an intentional criminal offense, otherwise they have at least written confirmation

according to Article 5.4.1.2.1. This article states that if the applicant or the person

obligatory convicted of an intentional criminal offense may submit a written confirmation

from a social worker, probation worker or social curator for long-term

cooperation (lasting at least six months) in which the applicant is actively involved

he cooperated in solving his life situation leading to a change in his current way

of life. The organization issuing this certificate shall describe the extent and purpose of the cooperation, including

qualitative indicators of change. Then the applicant can be treated the same when applying for an apartment

as an applicant with a clean extract from the criminal record, ie a person of good repute. Extract

from the criminal record, the applicants for the apartment will provide the employee of the housing department for inspection,

who notes in the file that the data agree with the solemn declaration. Extracts from the register

the party to the proceedings does not keep the copies, does not make copies of them, nor does it copy positive statements.

The inspecting inspector in the inspection report ref. UOOU-04736 / 14-7 of 14 October 2014

stated that, in accordance with that amended version of the abovementioned internal rules,

no sensitive personal data is processed. Because in the opinion

the inspecting inspector during the inspection the illegal situation was corrected, it was according to

§ 40a of Act No. 101/2000 Coll. waived the imposition of a sanction for an administrative offense. The party to the proceedings

points to the fact that, although the conclusion of the inspection in 2014 from

the punishment of the party for the administrative offense is waived with the proviso that the illegal situation has been rectified,

the party to the proceedings is sanctioned by the Office for one year and a half for this action.

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According to the party to the proceedings, the reasoning in the reasoning of the decision of the administrative body is irrelevant

first instance, namely that the tort / delict of the party to the proceedings was so serious that it did not

the sanctioning authority may waive the sanction, as this has led to a breach

Office Directive No. 5/2014 Coll. This is an internal regulation that is not legal in any way

binding on persons outside the Office. According to the party, the waiver cannot be established

since the punishment has been carried out in accordance with the applicable legislation, but not with internal law

therefore, the party to the proceedings is penalized for the same conduct. This is

on violation of the principle of legality, as the said procedure is in conflict with Section 46 (3) of the Act

101/2000 Sb. and the principle of protection of rights acquired in good faith. The party to the proceedings was at

on the basis of the audit conclusion stated in the inspection report ref. UOOU-04736 / 14-7 of

October 14, 2014 in good faith that he is acting in accordance with the law and that his actions will be in no way

sanctioned. Justification of the decision of the administrative body of the first instance, which according to

party to the proceedings has no legislative support and in itself represents a radical change in the Office's procedure,

the principle of legitimate expectations and the principle of legal certainty have been violated.

The party to the proceedings further argues that the liability of the legal entity (expires) for

administrative offense pursuant to the provisions of Section 46, Paragraph 3 of Act 101/2000 Coll., as according to the

statement of the decision

an administrative offense was committed in the period from 1 January 2014 to 9 July 2014

and the administrative proceedings concerning him were initiated by an order of the administrative body of the first instance of

April 15, 2016, delivered to the party on the same day.

The party further states that the duration of the infringement is defined in the operative part of the decision

as the period from 1 January 2014 to 9 July 2014, but there is one statement of reasons for the decision

this duration of the infringement is re-established, but a second time the administrative authority of the first degree states that to violate the obligation set out in § 1 letter d) of the Act No. 101/2000 Coll. it continued to occur, as it was a continuing administrative offense formed individual sub - attacks (ie the gradual collection of personal data of individual sub - attacks) applicants). This collection of personal data took place at the time of the second inspection Office, running from 16 December 2015 to 1 February 2016. This part of the statement of reasons for the which defines the duration of the administrative offense in fundamental conflict with the operative part, is according to the party to the proceedings, the decision of the administrative body of the first instance is incomprehensible.

The party considers that the very conclusion of the administrative body of the first instance about the continuing administrative offense is with regard to the inequality of individual partial attacks on legitimate interest incorrect. According to the party, it was not in the first case (after the first case) control) fulfilled the material feature of the administrative offense and for this reason is ongoing an administrative offense could not act even if all the formal features of this were met administrative offense. The party also refers to the basic principle in this context administrative punishment "in doubt in favor of the offender".

Finally, in the light of the above, the party proposes a decision of the administrative body first degree ref. UOOU-04225 / 16-6 of 17 May 2016 for its illegality, abolish incomprehensibility and unreviewability.

The appellate body examined the contested decision in its entirety, including the process which preceded its publication, and reached the following conclusions.

It should be emphasized in advance that the audit conclusion made by the Office inspector in the specific case under consideration, it does not in itself constitute a permanent administrative practice of the Office. Only in the context of persistent administrative practice is the degree of fulfillment of the legitimate principle possible expectations objectively. If one inspector of the Office does not consider a certain conduct to be violation of the law, its conclusion is not automatically binding on other inspectors of the Office, all the more so that it has not been reviewed by the superior administrative body, ie the President of the Office. When applied

personal data protection rules in the context of control, which largely depends on the administrative
at the discretion of the inspecting inspector, a situation where the same case is considered differently
legally assessed, taking into account the specific aspects of the case, however
negotiate an isolated situation.
It should also be added that based on the result of the previous inspection with not entirely accurate
no corrective measures or sanctions were imposed on the inspected by legal assessment,
in other words, no administrative decision has been issued which would affect the rights
controlled. Based on the change of legal assessment, it was not necessary, resp. possible
to proceed to an extraordinary review procedure pursuant to Section 94 et seq. Administrative Procedure Code.
The principle of legitimate expectations as a basic principle of the activity of administrative bodies, therefore, according to
the opinion of the appellate body was not violated. On the other hand, it must be stated that
the party's legal certainty has been weakened when he is now being penalized for the conduct in question
thanks to the audit conclusion made in the audit report of 14 October 2014
and the follow-up by the Office's inspector considered that it was in accordance with the law. This
in addition, the fact weakens the fulfillment of the material aspect of the administrative offense,
although there has been an interference with legally protected interests with a relevant degree of social harm.
As regards the question of the assessment of the administrative offense and its limitation, the appellate body first
states in general that there is no law in the Czech Republic that contains a general one
regulation (codification) of punishment for administrative offenses, therefore administrative law of tort is referred to as
so-called "judicial law". The court thus decides on cases in this area of administrative law
uses the analogy of law, the admissibility of which is justified by the Supreme Administrative Court as follows:
"The use of analogy in administrative punishment is permissible, to a limited extent, only where
when what is to be applied does not address a particular issue at all, unless such an interpretation is detrimental
nor to the detriment of the protection of the values, the creation and protection of which is public
interest ”(Judgment of the Supreme Court of 16 April 2008, Ref. 1 As 27 / 2008-67). That is the case

also the continuation of the committing of an administrative offense, the continuation being a form of committing an administrative offense

tort.

The continuation of a crime is a general category (general legal institute) that would

should be applied in all areas of illegal public offenses with regard to

unity of the rule of law. By continuing the crime, and by analogy also the administrative offense,

according to the provisions of Section 116 of Act No. 40/2009 Coll., the Criminal Code, means such conduct whose

individual partial attacks conducted by a unified intention fulfill, albeit in summary, factual

the essence of the same tort, are linked in the same or similar manner

and a close connection with time and context in the subject of the attack. It is therefore a gradual perpetration

administrative-crime at a given time by several sub-acts. The continuation of the administrative offense is

however, it is necessary to distinguish from the administrative offenses that persist, which is also characteristic

multiple attacks or unauthorized status for a period of time. Assessment of multiple acts

the perpetrator, as a continuing crime, assumes that his actions can be distinguished

individual partial attacks.

The administrative authority of first instance states in the statement of reasons for its decision in that regard that:

'Although the party made certain changes to the method after the first inspection

processing of information, ie did not directly request an extract from the criminal record, but the applicant had to attach

to the application a solemn declaration concerning the contents of his criminal record, the extract of which only

submit for inspection and verification whether the data contained in it agree with the honorary

statement, it is still a processing of personal, respectively. sensitive data in principle

to the same extent as in the previous case. It is clear that the party to the proceedings has

consequently available in a completely identical and equally relevant way

verified information on whether or not the applicant has committed an intentional criminal offense. Data

on non-conviction or conviction of the applicant for the allocation of a municipal flat remain part of

his applications for the allocation of a municipal flat, although an extract from the criminal record does not form part of them and the authorized official merely inspects it to verify the accuracy of the information provided by the applicant facts. The party to the proceedings thus continued to process personal and sensitive data. Due to that the party has not sufficiently demonstrated the need to process this request personal data, in the case of information on the conviction of the data sensitive applicant, continued to occur on his part to collect redundant data in violation of § 5 para. d) of the Act No. 101/2000 Coll. The information carrier is not decisive, ie. whether the party to the proceedings keeps extract from the criminal record or information from it is stored in a different way, but whether given actually collects and uses the data. However, the party has not substantiated that The collection of data on the criminal history of the applicant for the conclusion of the lease is under control justified and proportionate in the case under consideration. From the inspection findings of the inspection report Ref. UOOU-04736 / 14-7 prepared by the Inspector of the Office JUDr. Jiřina Rippelová shows that that from 2007 to 2014 the party to the proceedings registers only two applicants for the apartment who submitted an extract from the criminal record, which stated a conviction for negligence and whose application was subsequently assessed by the city council. The party further stated that according to his findings, up to 25% of tenants did not pay the first rent by the end of 2012 and as of the date of drawing up the inspection report on 14 October 2014, the total rent debt was CZK 100 million. From the above, it can not be concluded in any case that any criminal the past of those interested in concluding a lease has an effect on the non-payment of rent. "

Even after the change in the above-mentioned internal regulations, the party to the proceedings continued to take place to fulfill the factual substance of the administrative tort according to § 45 par. 1 let. c) of the Act No. 101/2000 Coll., as the participant further in similar individual cases, negotiations applicants for the conclusion of the lease, further collected personal data in the redundant to the same extent, identical data on convictions or non-convictions, and so on by individual acts he fulfilled the factual substance of the same administrative tort.

Pursuant to the provisions of Section 46, Paragraph 3 of Act No. 101/2000 Coll. liability of a legal person for

the administrative offense (according to this Act) expires if the administrative body has not commenced proceedings against it one year from the date on which he became aware of it (subjective limitation period), but no later than within three years of the date on which it was committed (objective limitation period). One - year limitation period for administrative offenses, it is calculated from the moment when the administrative body reliably found out that it could have been committed an administrative offense. The subjective period of one year begins to run when it is given reasonable suspicion of a violation of the law, not until the day on which there is a suspicion of a violation of the law proven. According to the resolution of the enlarged Senate of the Supreme Administrative Court (file no. 7 Afs 14/2011), the administrative body will find out about a possible violation of the law on the day it concentrates the range of knowledge, information and evidence from which to commit a tort.

It is not decisive whether the inspection report has already been drawn up on that day or whether these The findings were analyzed and assessed with the conclusion that the offense was committed and by whom. From above It follows from the above that the control body is also considered to be an administrative body in the given case.

The one-year deadline in question is not linked to the obligation to issue a final administrative decision on an administrative offense and impose a fine for it, but only with the commencement of administrative proceedings.

In the present case, the inspection body became aware of the facts indicating the infringement of the Act during the first inspection, taking place between 18 June 2014 and 13 October 2014. Na alerted the party to this illegal situation. The party to the proceedings responded by amending its the above regulations. Subsequently, the Office inspector in the inspection report (part B. Assessment of the relevant provisions of Act No. 101/2000 Coll., P. 5) incorrectly stated that the illegal situation had healed and since the imposition of a sanction pursuant to Section 40a of the Act No. 101/2000 Coll. dropped.

During the repeated inspection, carried out in the period from 16 December 2015 to 1 February 2016, he arrived Office Inspector PhDr. Petr Krejčí in item no. 34 of the protocol on control ref. UOOU-03739 / 15-16 conclude that the processing of redundant sensitive data of apartment applicants who are not

necessary for the purpose, the party to the proceedings violated the obligations arising from the provisions of § 5 par. 1 letter d) of Act No. 101/2000 Coll. The conclusions of the inspectors therefore differ, with

All of the above information shows that the party in the infringement continues

continued, as the amendment of the internal regulations of the party to the proceedings on this state virtually nothing has not changed. In the operative part of the decision, a fine was imposed on the party to the proceedings only for the period from

1 January 2014 to 9 July 2014, ie for the period when the Office, in the subjective preclusive period,

although it has established a factual situation indicating that the conduct of the party is unlawful,

did not initiate administrative proceedings and, moreover, the Office 's inspector waived the imposition of the fine because incorrectly stated that the illegal situation had healed.

According to the appellate body, the party 's objection must therefore be held to be administrative

the proceedings were initiated only after the expiration of the subjective preclusive period stipulated in § 46 para. 3 Act No. 101/2000 Coll. Thus, a party to the proceedings cannot be punished for collecting data

within the period specified in the operative part of the contested decision, since it is subjective

the limitation period has already expired.

On the basis of the findings of fact and the legal assessment made in the second inspection

Office Inspector PhDr. Petr Krejčí ordered the party to the proceedings by order no. UOOU-04099 / 16-2 ze

on 31 March 2016, remedial measures aimed at bringing the infringement to an end, namely

ordered him to stop collecting redundant data, to adjust accordingly

forms and other documents, inform the persons concerned of this change and also make it inaccessible

redundant data processed so far. These remedial measures came into force on

April 11, 2016. Even in view of this fact, it does not seem expedient to the Appellate Body

continue the administrative proceedings, therefore, together with the annulment of the contested decision, the administrative driving stops.

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, August 12, 2016

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman