

Ref. UOOU-08327 / 15-26

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 27 January 2016 according to § 152 par. 5 let. b) of Act No. 500/2004 Coll., as follows:

Appeal of the party to the proceedings, natural persons (FO) 1, against the decision of the Office for Personal Protection data ref. UOOU-08327 / 15-16 of 16 October 2015, is rejected and the contested decision is dismissed confirms.

Justification

Participant in the proceedings of the Community of Unit Owners (SVJ), on 24 July 2015 of the Office for Unit Owners protection of personal data (hereinafter referred to as the "Office") announced the intention to process the camera system personal data for the purpose of property protection without the consent of the persons concerned on the basis of provisions of § 5 par. 2 let. e) of Act No. 101/2000 Coll. CCTV system in the apartment

The house consists of six cameras. Two identically located cameras in each of the three entrances, which capture the space of mailboxes and the entrance to the house (in continuous recording mode) and space at the elevator and entrance to the basement of the house (in continuous recording mode).

The installation of the camera system was approved at the SVJ assembly, however in the opinion it is not possible to keep the consent of the inhabitants and visitors of the house in the current state, and therefore intends to use the legal title according to § 5 para. e) of Act no. 101/2000 Sb.

In addition to the notification of 19 August 2015, the party to the SVJ proceedings sent photographs planned location of both cameras, (these are two identically located cameras in each of the three entrances, a total of six cameras) and also provided an overview of emergencies in an apartment building - apartment theft and other property damage (eg door damage

elevator, damage to the painting of common areas and damage to the front door handles). Further

The party to the proceedings of the SVJ stated that the recording equipment would be placed in a lockable cabinet which only two members of the committee or audit committee will have access to, and is also possible

password fragmentation. On 24 September 2015, the party to the SVJ proceedings supplemented the notification

secondly, in this addition he stated that the camera system allows to rasterize (set areas,

which will not be captured) on each camera separately. The party to the proceedings of SVJ stated that these areas

sets to meet the requirement not to monitor the front door to the house and the door from

1 The party's personal data were anonymised for the purposes of publishing the decision.

elevators. The cameras will only monitor the space of the mailboxes and the entrance to the cellars

space. At the same time, the party to the SVJ proceedings stated that it would be before the installation of the camera system

information has been submitted to all residents of apartment buildings to the extent specified in Section 11 (1)

Act No. 101/2000 Coll.

On 26 August 2015, an administrative proceeding pursuant to Section 17 of the Act was initiated against the participant in the SVJ proceedings

No. 101/2000 Coll. for serious concerns of a breach of the following obligations under

Act No. 101/2000 Coll. This is the duty of the data controller according to § 10 of the Act to take care of

processing so that the data subject does not suffer harm to his rights, in particular the right to

maintaining human dignity, as well as ensuring protection against unauthorized interference

privacy and personal life of the data subject by intending to collect personal data

its members and residents of the apartment building through cameras located in the space

entrance hall with letter boxes and in the entrance area to the elevator of the apartment building.

Furthermore, it was the duty of the administrator in accordance with § 5 paragraph 2 of Act No. 101/2000 Coll. have

proper legal title to be processed, in which case it was not clear whether it was possible

apply the title regulated in § 5 par. 2 let. e) of Act No. 101/2000 Coll. (he excluded the consent himself

party to the proceedings). The last point examined was the information obligation according to § 11 of Act no.

101/2000 Coll., When the data controller is obliged to inform when collecting personal data

the data subject to what extent and for what purpose personal data will be processed, who and how will process personal data and to whom personal data may be made available, the right of the data subject to access personal data, the right to rectify personal data as well as other rights specified in § 21 of Act No. 101/2000 Coll.

Another party to the proceedings was a party natural person who on September 14, 2015 delivered a proposal to reject the application for a permit to the Office via the data box operation of the camera system of the SVJ management party and at the same time stated that he could be affected by the decision of the Office in the present proceedings on rights and obligations and is therefore party to this proceeding. Administrative body of the first instance by resolution of 25 September 2015 stated that the appointed party, FO, was a party to the proceedings. The party requested the FO rejection of the application for permission of the camera system, stating that it is unfounded because of his In order to protect apartment buildings, compliance with existing measures is sufficient (eg consistent front door locking).

On 16 October 2015, the administrative body of the first instance issued a decision, ref. UOOU-08327 / 15-16, which stopped the administrative proceedings pursuant to the provisions of Section 17, Paragraph 2 of Act No. 101/2000 Coll., as the

On the basis of the evidence gathered, it concluded that the party to the SVJ proceedings intended processing does not violate the conditions set by Act No. 101/2000 Coll. In the justification In its decision, the administrative authority of the first instance stated that the processing of personal data the notifier meets the conditions for the application of a legal title pursuant to § 5 para. E) Act No. 101/2000 Coll., as the location of the cameras implies that they will shoot only narrow space of mailboxes and entrances to cellars in individual apartment buildings and will thus record data subjects to a reasonable extent. Therefore, it will not happen such infringements of the data subject 's right to privacy (in this case in particular residents of apartment buildings), which would preclude the application of this legal title. Informative

obligation according to § 11 paragraph 1 of Act No. 101/2000 Coll. according to the statement of the participant in the SVJ proceedings

fulfilled to the extent and in the manner prescribed by the administrative authority of the first instance meets the requirements of this law.

The party to the FO proceedings filed against the decision of the administrative body of the first instance ref. UOOU-08327 / 15-16, which was delivered to him on 24 October 2015, timely dissolution, delivered to the Office on November 9, 2015 (note the decomposition was sent via the data box on the 7th November 2015, but this day fell on a Saturday).

In the appeal, the party to the FO proceedings stated that, in his opinion, the administrative body of the first instance has not established sufficiently decisive facts of the personal data processing technique, or found them properly, but incorrectly assessed them legally, and thus proceeded in violation of § 2 par. 4, § 3 and § 7 of Act No. 500/2004 Coll. The decision thus suffers from substantial defects, it is internal

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contradictory, illegal and must be annulled and decided again. Insufficient finds findings of decisive facts or incorrect assessment of the facts party in the incorrect assessment of the impact of CCTV on privacy

data subjects, because in order to be able to occupy mailboxes or cellars, they will, according to him

In the opinion of the camera, they must always occupy the spaces used to access the apartments. According to the statement The participant in the FO proceedings will have one camera occupying the only entrance to the house, which is located at boxes, and a second camera will capture the only staircase and the only elevator in the house that are u doors to the cellars. The party to the FO proceedings considers that a camera system is not necessary solution and is not proportionately more beneficial and that the use of a lock would be more appropriate entrance doors with a higher degree of security and more consistent locking.

The party to the FO proceedings further states that the camera located at the mailboxes will be interfered with the secrecy of correspondence guaranteed in Article 13 of the Charter of Fundamental Rights and Freedoms, because according to the color difference of the envelopes (eg blue stripe), their shape and addressing the addressee to

envelope, in his opinion it is possible to get a sufficient idea of the content of the letter.

The party to the FO proceedings further stated that the administrative body of the first instance did not deal with it objections, which, in his view, acted contrary to the basic principles of action administrative authorities.

The party to the proceedings of the FO also objects to the unreviewability of the decision, as the administrative body of the first degree did not state what types of theft and vandalism there was to be in the house. It is not so according to him, such circumstances can be assessed, although on the basis of this statement the administrative body the first instance ruled.

At the end of its appeal, the party to the FO proceedings requests, for all the above reasons, that

The President of the Office decided in accordance with § 152 para. a) of Act No. 500/2004 Coll. so, that the decision of the Office of 16 October 2015, No. UOOU-08327 / 15-16, is repealed and amended as follows: that the announced processing of personal data by a camera system in apartment buildings is does not allow.

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

The FO party 's assertion that it was not sufficiently established by the administrative authority of the first instance the real state of affairs, as the cameras will monitor a single entrance to the house and a single staircase and lift, ie will occupy the premises used to access the apartments, the appellate body states that from the statement of the other participant

- the notifier, SVJ, and obtained from him

photo documentation of the intention to place cameras is evident that these cameras will shoot only narrow space at the entrance and mailboxes and entrances to the cellars in the individual apartment buildings, and will thus record data subjects in the minimum resp.

to a reasonable extent. The party to the proceedings FO is of the opinion that in order to be seized cameras boxes or cellars, the cameras will always have to occupy the space used for

access to apartments. The appellate body states that from the documented photo documentation (intention

location of the cameras), which was sent to the Office by the party to the
notifier SVJ on 19 August 2015 and its description, nothing like this is apparent. Camera
the system will not occupy access roads to individual apartments. The cameras will only occupy
two narrow sections in the common areas of the apartment building, essential to the discovery
perpetrator in case of physical damage to the boxes or burglary of the cellar, or another
damage to common areas within range of cameras. Other areas, eg entrance to
elevator, thanks to the technical solution (rasterization of the scope of individual cameras) will not be monitored.
The camera system will therefore be set up so that it can fulfill its purpose of protecting the rights of the participant
management and other persons, and at the same time to intrude on the privacy of the inhabitants of the house
only to the extent necessary.

According to the provisions of § 5 par. e) of Act No. 101/2000 Coll. can be processed by the administrator
personal data where this is necessary to protect the rights and legally protected interests
management

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management

as a controller of personal data

the administrator, the beneficiary or other persons concerned; however, such processing of personal data may not
be contrary to the data subject's right to protection of his or her private and personal life.

The right to privacy can thus be limited by the exercise of another 's right (right to life
and health, for the protection of property), but in each individual case it is necessary to evaluate
the intensity of both interventions in terms of the means chosen. Means and method of processing
personal data by the participant
can be considered

reasonable in view of the extent and manner of the threat to his rights and the rights of others concerned
persons (inhabitants of an apartment building).

The Constitutional Court of the Czech Republic in its judgment in file no. Pl. ÚS 4/94 of 12 October 1994, which is

confirmed by other case law of the Constitutional Court of the Czech Republic, he expressed the opinion that collusion of fundamental rights and freedoms, proportionality test, consists of the following criteria: The first is the criterion of suitability, ie the answer to the question whether institute, which restricts a certain fundamental right, makes it possible to achieve the objective pursued (protection of another fundamental right). In this case, it can be stated that the installation of a camera system in apartment buildings, it makes it possible to achieve the goal, ie to ensure the protection of the rights of the persons concerned.

The second criterion is the criterion of necessity, which consists in comparing the restrictive means fundamental right, resp. freedom, with other measures to achieve the same goal, but affecting fundamental rights and freedoms to a lesser extent. In this regard, the appeal authority states that the need to use the device (camera system) participant proceedings - the notifier SVJ has sufficiently demonstrated the above-mentioned list of cases of damage his property and the property of other persons, which occurred repeatedly and which he tried as far as possible to avoid (for example, by fitting grilles on the door of the bike shed after repeated damage to their lock, prompting the occupants of the house to lock the front door), however in other cases, the protection of the property of the party to the proceedings and other persons concerned is effective perhaps only with the help of a camera system (because, for example, it is difficult to bar or provide lock elevator so that it continues to fulfill its function). The third and final test criterion proportionality is then a comparison of the gravity of the two conflicting fundamental rights. IN one of them is the right of the data subject to the protection of his or her privacy, and personal life, the second is the right to protection of the rights and legally protected interests of the the beneficiary or other persons concerned. As already mentioned, the severity of the intervention is assessed to both opposing rights. In case of repeated damage property and other interference with the rights of the persons concerned, as well as personal life of data subjects is through a specific camera system (p with regard to its settings, scanned spaces, etc.) minimal, the right to protection of property

participant in the proceedings prevails and the application of the legal title according to the provisions of § 5 para. E) Act No. 101/2000 Coll. is possible. Participant in the SVJ proceedings supplementing the processing notification personal data of 19 August 2015 documented an overview of emergencies in housing houses (apartment robberies, damage to cellar doors, broken glass panels, damage elevator doors, breaking the mirror in the elevator, damage to the painting of common areas and damage doors to the dormitories) and the measures he took before the planned installation of the cameras, which he failed to do prevent further incidents. It is clear from these facts that it prevails in this case interest in the protection of property over the protection of private and personal life of data subjects, because interference with the rights of the party and other persons occurs and interference with the right to privacy is indeed minimal and given the circumstances of the case adequate.

The appellate body further draws attention to the fact that the party to the proceedings FO itself in its letter The Office of 13 September 2015 states that even though the party to the proceedings (specifically the SVJ Committee) placed in the apartment building inscriptions with a requirement to lock the front door, it does not happen and very often the door is not locked. This statement of the party FO only confirms the need and effectiveness of additional security measures, the camera system.

Therefore, for all the above reasons, the appellate body does not agree with the participant's argument FO proceedings that the administrative body of the first instance did not sufficiently assess the facts case. On the contrary, it can be stated that, taking into account all the circumstances of the intended processing of personal data and to all facts found primarily from both participants

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The administrative body of the first instance assessed the matter correctly, taking into account the degree of intervention considered the notified processing to be admissible in all the rights concerned.

The appellate body alleged a violation of the constitutional right to the protection of correspondence states that the party to the proceedings of the SVJ states in its observations on the filed appeal that the letter the secret will not be violated, because the settings of the cameras do not allow it, and the camera focused

The mailboxes are used primarily to detect the perpetrator in the event of physical damage to the mailboxes.

In addition, as can be seen from the SVJ party's statement on the appeal, there will be a camera

positioned so that the person opening the box stands with his back to the camera, and letter items so

they will usually not be in the camera shot. Interpretation of the concept of correspondence by the participant

FO proceedings is, in the opinion of the Appellate Body, extremely extensive and does not correspond to the purpose and meaning

of this institute, which is primarily the protection of the content of the letter communication, ie the opening and reading the letter, not addressing the addressee on the envelope. To violate this basic

rights occur if the unauthorized person opens and reads a letter addressed to another addressee (see

Constitutional Law and Political Science, II. part - 2 editions, Václav Pavlíček and team, Leges Praha a.s.,

2015), not by the fact that in the event of an incident in the mailbox area may be on

camera record, which will be used to resolve the incident, is randomly captured letter

shipment, resp. her envelope.

The FO party's presumption that the CCTV system can be destroyed or deceived and that it can

records may be misused, the appellate body shall state that such arguments of the participant

management are mere hypotheses without support in factual findings. Suitability of the means used

to protect property always depends on an assessment of the specific circumstances of the case. To abuse

Personal data can occur at the heart of the matter at all times, so it is the administrator's responsibility to accept

measures to prevent data misuse. In this case, from the file material

there is no specific suspicion of not ensuring data security within the scope of § 13

Act No. 101/2000 Coll.

The FO party 's argument that the administrative authority at first instance did not deal with it

objections, which, in his view, acted contrary to the basic principles of action

administrative bodies, the appellate body states that according to § 52 of Act No. 500/2004 Coll. are participants

proceedings are required to indicate the evidence in support of their claims. The administrative body is not the proposals of the

participants

bound, but will always provide the evidence necessary to establish the state of affairs. It's completely on the discretion of the administrative authority which considers the evidence and allegations to be relevant and leading to a finding

the facts of the case. The non-binding nature of the administrative body is not a manifestation of the parties' proposals breach of the principle of impartial treatment of the persons concerned in administrative proceedings, enshrined in § 7 paragraph 1 of Act No. 500/2004 Coll. The administrative body of the first instance proceeded so as to establish the state of affairs to the extent necessary for the conformity of his decision with principles of operation of administrative bodies as well as specific legal requirements. On

The principle of free assessment of evidence is closely linked to the obligation to state reasons decision. In accordance with § 68 paragraph 3 of Act No. 500/2004 Coll. the administrative body is obliged to state in the statement of reasons for the decision for its issuance, the considerations followed in their evaluation, as well as information on how the administrative body dealt with the proposals and objections participants and their comments on the basis of the decision (cf. Jemelka, Pondělíčková, Bohadlo. Administrative Procedure. Comment. Prague: C.H.Beck, 4th Edition, 2013). Administrative body of the first degree, even taking into account the arguments of the party to the proceedings, FO justified, albeit briefly, why in his opinion, the notified processing of personal data is in accordance with the requirements of Act No. 101/2000 Sb. and also took into account the observations of the appointed party.

In this connection, the Appellate Body notes that the proceedings conducted pursuant to Section 17 (1) of the Act No. 101/2000 Coll. is a procedure following the fulfillment of the notification obligation pursuant to Section 16 of this prescription. It is therefore an evaluation of the intended, future processing of personal data, not processing that is already in progress. This also sets certain factual limits of such proceedings, because the Office does not assess the actual state of affairs in terms of the operation of the camera system, but the intention declared by the party to the proceedings.

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The plea of inadmissibility of the decision of the administrative authority of the first instance on the ground that insufficient definition, what is the threat to property - not specifying what species

theft and vandalism should have occurred because in the reasoning of the decision of the administrative body

In the first instance, there are no reference numbers from the Police of the Czech Republic, qualifications and a description of the facts

such acts, the appellate body states that it is not the duty of the administrative body of first instance

specify in detail the individual acts which indicate an interference with the rights of a party to the proceedings

SVJ or other people. The duty of the administrative body in a particular case is sufficient

justify why the party to the proceedings does not violate its obligations under Act No. 101/2000

Sb., And why it is therefore possible to stop the proceedings according to the provisions of § 17 paragraph 2 of Act No. 101/2000 Coll.

The facts stated by the party to the SVJ proceedings were the administrative body of the first instance

assessed and, taking into account all other facts, were assessed as conclusive

and relevant. In the procedure of the administrative body of the first instance, it is therefore not possible on the basis of a dissolution

found in this section as well.

The appellate body states that the administrative body of the first instance stopped the administrative proceedings completely in accordance with § 17 paragraph 2 of Act No. 101/2000 Coll. and duly substantiated its conclusions. From the content the appeal did not reveal any facts which would lead to an amendment of the contested decision.

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, January 27, 2016

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman