

Ref. UOOU-01297 / 16-48

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 8 August pursuant to § 152

paragraph 5 (a) b) of Act No. 500/2004 Coll., as follows:

Appeal of the party to the proceedings, Mr. P. Ř., Against the decision of the Office for Personal Data Protection ref. UOOU-01297 / 16-43 of 13 June 2016, is rejected and the contested decision is confirmed.

Justification

On 13 June 2016, a decision of the administrative body of the first instance was issued, ref. UOOU-01297 / 16-43, which was a party to the proceedings, Mr. P. Ř. (hereinafter referred to as the "party"), for breach of the obligation stipulated in § 5 paragraph 2 of Act No. 101/2000 Coll. and for committing offense pursuant to Section 44 (2) of Act No. 101/2000 Coll., in the period from at least 2009 to 22.

May 2015, imposed a fine of CZK 5,000 and the obligation to reimburse the costs of the proceedings.

The basis for issuing this decision was the protocol on control ref. UOOU-04515 / 15-14 ze

on November 10, 2015, file material collected during the inspection performed

at the party to the proceedings by the inspector of the Office for Personal Data Protection (hereinafter referred to as the "Office")

JUDr. Jiřina Rippelová in the period from 12 April 2015 to 6 November 2015 and file

material collected during the administrative proceedings. The inspection was initiated on the basis of complaint received by the Office on 14 April 2015.

It is apparent from the materials gathered that the party to the proceedings is the owner of the property at address Č. ulice, B. (the house is situated roughly in the middle of the street in a continuous row of others

houses) and on the outer facade of the house towards the street No. has two cameras installed recording equipment, including motion sensor responsive luminaires.

One camera is installed on the left above the windows on the ground floor, the other camera is located to the right above the front door at the same height as the first camera. Cameras monitor a part of Č. Street (ie a part of the street approximately 50 meters long), ie road, adjacent sidewalks and real estate (family houses) located here in both directions from the property in question (on both sides of the street it is a continuous row of houses).

In addition to the public road, the cameras in question also monitor individual houses and entrances to of these houses, while the opposite house No. p. xxx (e.g.

entrance doors and windows) and the space in front of it. Camera system with recording device

was installed by an external company. The name of the company that installed the camera system

the party did not state that he no longer remembered her name and therefore did not even document the contract, on the basis of which the camera system was installed.

The party to the proceedings primarily identified the prevention of illegal data as the purpose of processing personal data negotiations - the possibility to provide the relevant administrative authorities and the city police tangible evidence of violations of the ordinances of the city of B. and, last but not least, the protection of property and their health families. Specifically, according to the party to the proceedings

act to prevent damage

parked vehicles and his property and their pollution by dog feces. He wanted to

to prevent theft, harassment and verbal and physical assault and to protect his or her

two vehicles parked in front of the house (in the past, according to the party, both were

vehicles repeatedly damaged, decorative wheel disks were stolen, the flag was broken on

antenna and broken mirror). After installing the cameras according to the participant in the damage proceedings vehicles stopped.

The contested decision found that the party had committed an offense because

processed personal data with the described cameras without the existence of a legal title, ie in conflict

with § 5 paragraph 2 of Act No. 101/2000 Coll.

Against the above-mentioned decision of the administrative body of the first instance ref. UOOU-01297 / 16-43 the legal representative of the party to the proceedings filed a timely appeal delivered to the Office on 4 July 2016 via data box.

In the appeal, the lawyer of the party to the proceedings states that he does not agree with the contested decision, since, in his view, the party did not infringe any of his conduct provisions of Act No. 101/2000 Coll ..

The legal representative of the party to the proceedings pointed out that in § 3 paragraph 3 of Act No. 101/2000 Coll. it is stipulated that this law does not apply to the processing of personal data which it carries out natural person exclusively for personal use. Without being explicitly stated by the lawyer, it is possible conclude that the purpose of that legislation is to claim that the said derogation from the scope of the Act applies to the activities of the party to the proceedings. In this context, the lawyer further stated that the administrative body had reached the wrong conclusions because its principal had the record is available for its use only 24 hours after its acquisition. After this time, if the record was not needed, it was automatically deleted from the technical device. The party to the proceedings he did not make recordings systematically, nor did he purposefully collect camera recordings, because he is very often on long-term business trips.

The appellant's lawyer further claims that there is no relevant administrative file journalized so that anything can be added or removed as needed.

According to the party's lawyer, the party never used the records to publish the entities, used them only as evidence obtained for law enforcement agencies proceedings, or for state administration bodies. In such a case, therefore, he could not act affect the interests protected by Act No. 101/2000 Coll.

At the end of his appeal, the legal representative of the party to the proceedings, on the basis of the above claims that the contested decision should be annulled.

The appellate body examined the contested decision in its entirety, including the process which

preceded its publication, and reached the following conclusions.

According to § 4 letter a) of Act No. 101/2000 Coll. is personal information any information concerning designated or identifiable natural person, data subject. The data subject is considered to be designated or identifiable if it can be directly or indirectly identified. In the sense of the above is capturing the appearance of a natural person on a camera recording with personal data. According to § 4 letter E)

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Act No. 101/2000 Coll. personal data processing is any operation or system operations which the controller systematically carries out with personal data, either automatically or by other means. The processing of personal data means, in particular, the collection, storage, making available, modifying or modifying, retrieving, use, transmission, dissemination, publication, storage, exchange, sorting or combination, blocking and liquidation. The operation of a camera system is the processing of personal data especially if, in addition to camera surveillance, the recording is made shots or information is stored in the recording equipment at the same time

Acquired records are their use to identify individuals in relation to a particular negotiations. According to § 4 letter j) of Act No. 101/2000 Coll. is a controller of personal data everyone the entity that determines the purpose and means of the processing of personal data carries out the processing and is responsible for it.

In other words, the party to the proceedings, as the administrator, determined the purpose and means of personal processing data and personal data through a camera system.

The arguments of the party 's lawyer concerning the exceptions to the scope

Act No. 101/2000 Coll. the appellate body states that in the previous proceedings there was demonstrated that the participant in the proceedings record from the camera system for some time the length of retention of the video is not decisive. As indicated

in the inspection report, the party has been monitoring the proceedings almost continuously for many years an area of at least 50 meters of the street, ie an area where his argument that

protects your property. It was therefore by no means a random gathering of personal data, application of the provisions of § 3 paragraph 4 of Act No. 101/2000 Coll. therefore it is not in this case possible. Personal data were processed by the party to the proceedings because they were stored on an information carrier (camera recording) and also with this personal data further the party to the proceedings worked (evaluated them and sent some of them to the Police of the Czech Republic and the Municipal Office in B.).

The party's lawyer in the appeal lodges that the party processes personal data exclusively for its own needs. For the processing of personal data the Court of Justice of the European Union has ruled on camera for its own use in its judgment in Case C-212/13 of 11 December 2014, František Ryneš v Office for Personal Data Protection, where it is considered the processing of personal data processing such as correspondence or management for personal use only address book. If the camera collecting personal data captures - albeit partially - public space, and is therefore focused outside the private sphere of a person, cannot be his considered to be exclusively a personal or domestic activity. The appellate body therefore having regard to these legal arguments and the conclusions of the Court of Justice of the European Union states that the scope of Act No. 101/2000 Coll. applies because the cameras operated by the party to the proceedings were focused primarily on public space, that is, outside his purely personal sphere.

Argument of the lawyer of the party that the file concerning the administrative proceedings with the party to the proceedings is not journalized (lawyer apparently, as in the Slovak legislation means that the file is not sv bound ') so that anything can be added to it as needed or also cut out is absurd. The rules for keeping the file, including the insertion of documents, are clearly stipulated in § 17 of Act No. 500/2004 Coll., in Act No. 499/2004 Coll., on archiving and the File Service and on the amendment of certain laws, and in the related internal regulations of the Office. Each file kept at the Office includes a file overview where they are recorded

all documents (including video, audio and electronic recordings)

media) embedded in it. Furthermore, it is in accordance with the provisions of § 15 para. 2 and para. 4 of the Administrative
in each file, an official record of the authorized officials in that file shall be kept

management. The file is kept in writing and electronically, while both versions have the same content

and the electronic file service automatically records every access to the file and every change

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its items or the documents contained therein. Any arbitrary removal or addition

documents by an administrative body or a party to the proceedings is completely excluded. Your claim

that the file is not "journalized" and that it could have been manipulated, the party does not

although he inspected the file on 31 March 2016. Allegation of insufficient "journalism"

of the file is thus either a purely purposeful misinterpretation, or it results from misunderstanding or ignorance
elementary rules of keeping an administrative file in the Czech legal system.

As such, the appellate body states that the party to the proceedings operates

camera system with recording without the consent of data subjects (residents or

passing or passing through Č.). For the purpose of processing personal data declared by him

(protection of the property and health of the party to the proceedings and members of his family) is possible in addition to
consent

concerned, which was not in progress

management is documented, which, moreover, given

to an unlimited circle of affected persons, in fact it is not even possible to consider only use

legal title according to § 5 par. 2 let. e) of Act No. 101/2000 Coll. Based on this legal

the administrator may process personal data if this is necessary for the protection of rights

and the legally protected interests of the administrator or other persons concerned, provided that

such processing of personal data will not be contrary to the right of data subjects to protection

their private and personal lives.

The need to process personal data without the consent of the persons concerned and the degree of interference with

their private and personal life, which could constitute a violation of this right, is always subject to proportionality - necessity and proportionality assessment of the elected means to protect the rights and legally protected interests of the personal data controller, which is interfered with the rights to protection of the private and personal lives of the persons concerned. He judges the particular purpose of the processing of personal data, as it is essential that the personal data be processed the data were not excessive and must be justified at each stage of the processing scope of personal data.

In carrying out the proportionality test in this case, it was a first-instance administrative body particular account of the type of premises taken by the party to the proceedings. No. street is made up of locals roads with double-sided sidewalks adjacent to the continuous terraced development of family houses near the city center B. People living here permanently have no other way to get to your home than under the constant surveillance of cameras, as well as the people who this street they go through it or visit it for personal or business reasons. Camera system the passing vehicle is also scanned by vehicles passing through or parked there.

The party's lawyer states in the appeal that the party has been forced to protect your property adopt this technical solution as before installing a camera system, his property was still destroyed, such as the breaking of rear-view mirrors on his car and intentional pollution of the sidewalk in front of his house excrement.

However, the party has not shown that there have been more serious past or present cases incidents or damage to his property, his health and the health of his family members. On a question from the inspectors as to whether he can submit records of reported damage to vehicles or another defective act, he stated that he does not have such documents, as he has none does not store. In this connection, he stated that he always reports defective actions to the police or to the city council. At one time, that conduct was the subject of a civil action, but whereas, in his view, the judge did not adequately assess the evidence (record from the camera system), his action was not upheld. He stated that neither did this

he cannot prove it with any document, but he can obtain the document in court, which, however did not do.

The legal representative of the party to the proceedings on the issue of legally protected interests of the party continues states that he was physically attacked in the past and that they have documents from the Police of the Czech Republic be established in the administrative file. The appellate body states that the party to the proceedings did not provide any such documents during the administrative proceedings, the statement of the lawyer the participant is thus not based on the truth.

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more extensive monitoring,

From the materials provided by the Municipal Office B. it follows that the content of the vast majority

The complaints addressed to the Office by the party to the proceedings were a warning of public pollution free range dogs.

For the sake of completeness, the Appellate Body refers to the fact that the Office's inspector relied on the proportionality test and ordered a change in the shooting settings of both cameras in such a way that the party to the proceedings ensures the protection of the real estate shell by operating a camera system in his possession less

thus monitoring only

the immediate vicinity of the property owned by him. To achieve this, the supervisor

authority seems sufficient to capture the space in front of the property to the extent necessary,

a maximum width of 1 meter from the building envelope. When shooting in this way, it is possible to comply with the provision of § 5 par. 2 let. e) of Act No. 101/2000 Coll. use a camera system

to protect property without the consent of the data subjects without unduly interfering with their data privacy.

The party to the proceedings as a natural person does not have the status of a state body or a self-government body and the general reporting obligation laid down by the Criminal Code for certain criminal offenses does not entitle to systematic monitoring of all persons moving in a large part of Č. Street,

especially those living here permanently. Means and method of personal data processing the party to the proceedings as the controller of personal data cannot take into account the above considered reasonable. The processing of personal data by the party to the proceedings does not meet the conditions provisions of § 5 par. 2 let. e) of Act No. 101/2000 Coll., as it follows from the location of the cameras that they do not only monitor the narrow space necessary to protect the party's assets.

The appellate body states that the administrative body of the first instance acted in full compliance with the Act No. 101/2000 Coll. and duly substantiated its conclusions. They did not appear to contain decomposition no facts that would alter the contested decision. Administrative sanctions the tort was imposed on the party to the proceedings at the lower limit of the statutory rate.

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 8, 2016

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

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