

OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-08948 / 18-16

DECISION

Chairwoman of the Office for Personal Data Protection as an 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 according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 4 February 2019 pursuant to

§ 152 par. 6 let. b) of Act No. 500/2004 Coll. thus:

Appeal of the party to the proceedings, Mr. XXXXX, against the decision of the Office for Personal Data Protection ref. UOOU-08948 / 18-9 of 5 November 2018, is rejected and the contested decision is upheld.

Justification

By order no. UOOU-08948 / 18-3 of 20 September 2018 sent to the party, Mr XXXXX ('the party to the proceedings'), proceedings were initiated to impose remedial measures to eliminate them identified deficiencies pursuant to Section 40 of Act No. 101/2000 Coll., on Personal Data Protection and on Change certain laws. This order was delivered to the party on September 23, 2018. The basis for its issue was a protocol on the control of Ref. UOOU-09488 / 14-74 of 11 May 2018 taken pursuant to Act No. 255/2012 Coll., on control (control rules), and file material collected during the inspection performed at CSR & Protikorupecnilinka.cz s.r.o., with its registered office at Pankráci 1724/129, 140 00 Prague 4, ID number: 038 77 248, inspector of the Office for Protection personal data (hereinafter referred to as the "Office") Ing. Josef Vacula from March 31, 2016 to 30. July 2018, including the settlement of objections by the President of the Office Ref. UOOU-09488 / 14-81 of 18. July 2018.

However, on 1 October 2018, the Office received a statement of opposition to the order, as a result of which it was higher the said order in accordance with § 150 paragraph 3 of Act No. 500/2004 Coll., Administrative Procedure Code, repealed and administrative

the authority of the first instance continued the proceedings. By decision of the Office ref. UOOU-08948 / 18-9 of

On November 5, 2018 (the "Decision"), it was re-imposed on the party

the obligation to take corrective action specified in the operative part of the decision, in the case

processing of personal data available at www.centralniregistrdluzniku.cz and www.cerd.cz.

On November 30, 2018, the party filed a proper appeal against the decision, albeit incorrectly

marked as resistance leading to decomposition. He supplemented this with a submission dated 18 December 2018.

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The party challenged the decision as illegal, factually and locally irrelevant and stated that it was

based on false and distorted facts and contradict each other. He also pointed to the alleged

bias of the inspector Ing. Josef Vacula. In addition to the appeal of 18 December 2018 its

he reiterated his arguments and further stated that he could not be required to perform acts, as he was not

the owner of the database, the system, the statutory body of the management companies or the controlling person, whereby

it is an encrypted system in a fully autonomous mode owned by the user.

The appellate body considers it necessary to provide the party to the proceedings to make a substantive and local claim

the Office's lack of competence. The Appellate Body nevertheless adds that substantive jurisdiction

The Office is given § 10 of the Administrative Procedure Code in connection with § 2 of Act No. 101/2000 Coll., According to

which it is

The Office is the central administrative office for personal data protection, with local

the competence of the Office is determined by the state territory. We can only conclude that for the administrative proceedings

in the case

processing of personal data taking place in the territory of the Czech Republic is the administrator established here

by the competent administrative authority of the Office and therefore none can be detected in this respect

steering defect.

The same applies in the event of an alleged inconsistency in a decision which is "in many acts" contradict. In this part, too, the party has not clarified its claim in any way, he merely stated that the decision was based on false and distorted facts without evidence. The appellate body therefore again merely states in general that after examination the decision did not find any defects. In particular, it considers that the decision satisfies all parameters for the decision imposed by the provisions of § 68 of the Administrative Procedure Code, is duly substantiated including an indication of the documents on which the administrative authority of the first instance based its issuance. Regarding the alleged reasons for the alleged bias of the Office inspector Ing. Josef Vacula, these already were resolved with negative conclusions within the proceedings of file no. stamp UOOU-07922/17, UOOU-08908/17, UOOU-06702/17, where the party asserted them from the position of managing director of CSR & Protikorupcnilinka.cz s.r.o., with its registered office at Na Pankráci 1724/129, 140 00 Prague 4, Company Identification Number: 038 77 248, and subsequently from the position of one's own person (resolution ref. UOOU-07922 / 17-19 of 19 November 2018). The appellate body will thus not comment on these matters again.

The appellate body also considered the objections on the basis of which the party considered that the proceedings cannot be conducted with his person. In that regard, the appellate body states that it is not relevant whether the system is encrypted or in what mode it operates. Regulation of the European (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) No. 101/2000 Coll.) defines the administrator as the person who determines the purpose and means of processing personal data, with the controller responsible for the election legal and legitimate purpose, reasonable means of processing, as well as for the fulfillment of follow-up obligations. For assessment the position of a party to the proceedings is so important precisely that its activities have fulfilled the definition of an administrator personal data in the sense of Regulation (EU) 2016/679 (and Act No. 101/2000 Coll.), which was sufficiently proven by the inspection described in the inspection protocol ref. UOOU-09488 / 14-74 ze

on 11 May 2018 (in particular Part VI, point 3), a copy of which was and is available throughout the proceedings part of the administrative file. It should also be emphasized that similar reasons were put forward by the participant driving from position XXXXX. in the context of objections to the above protocol, however, these were rejected by the President of the Office by letter no. UOOU-09488 / 14-81 of 18 July 2018. It is so at the same time obvious that the party to the proceedings was not in any way curtailed on its rights when was entitled at any time during the administrative proceedings to the file containing the protocol in question inspection and at the same time the content of the protocol was known to him from the inspection.

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On the basis of the above, the Appellate Body concludes that it is the party's responsibility to ensure the lawfulness of the processing of personal data, by virtue of meeting the definition of controller in the sense Regulation (EU) 2016/679 (also Act No. 101/2000 Coll.). After examining the contested decision therefore, the appellate body therefore argues that the party to the proceedings refused. At the same time, he did not find any reason to make the decision illegal or incorrect and found no errors in the procedure of the administrative body of the first instance.

On the basis of all the above, the Appellate Body 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, February 4, 2019

For correctness of execution:

Martina Junková

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman

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