OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DPCMJ *

Ref. UOOU-09383 / 18-17

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10

and § 152 para. 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided pursuant to the provisions of § 152

para. 6

letter b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Dismissal of the accused, Czech Republic - Ministry of the Interior, with its registered office at Nad Štolou 963/3, 170 34

Prague 7 - Holešovice, IČO: 00007064, against the decision of the Office for Personal Data Protection

Ref. UOOU-09383 / 18-8 of 7 August 2019, is rejected and the contested decision is upheld.

Justification

AND.

Proceedings in the matter of suspicion of committing an offense pursuant to § 62 para. a) and b) of the Act

No. 110/2019 Coll., on the processing of personal data, in connection with the processing of personal data

in the Civil Service Information System (hereinafter "ISoSS") was initiated by the delivery of an order

Ref. UOOU-09383 / 18-3 of 26 June 2019 (hereinafter the “Order”) of the accused, Czech Republic -

Ministry of the Interior, with its registered office at Nad Štolou 963/3, 170 34 Prague 7 - Holešovice, ID: 00007064

(hereinafter referred to as the "accused"). The basis for issuing the order was the file material collected

within the control of file no. UOOU-03173/18 kept by the Office for Personal Data Protection (hereinafter

"Office") from 20 March to 21 September 2018, including the settlement of objections by the President of the Office

by inscription ref. UOOU-03173 / 18-31 of 19 September 2018. The accused was found guilty by an order

from committing offenses according to § 62 par. a) and b) of Act No. 110/2019 Coll., however

with regard to the provisions of Section 62, Paragraph 5 of Act No. 110/2019 Coll. was imposed

administrative punishment.

Following the annulment of the order on the basis of the defendant's duly filed opposition, the administrative body continued

first instance in proceedings, the result of which was the issuance of a decision no. UOOU-09383 / 18-8 of

7 August 2019 (hereinafter "the decision") by which the accused was again found guilty of

committing an offense, on the one hand according to § 62 par. 1 let. b) of Act No. 110/2019 Coll., as

has infringed one of the basic principles for the processing of personal data pursuant to Articles 5 to 7 or 9

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on protection

individuals with regard to the processing of personal data and on the free movement of such data

and repealing Directive 95/46 / EC (the "General Regulation") by 4 July

2018 in connection with the sending of "Application for the establishment of a civil servant - a foreigner

without the possibility of identification according to the population register - to the register of civil servants

and assignment of a registration number "in 144 cases personal data given in personal copies

documents, at least in the scope of the photograph and possibly the signature of the holder of the document, in conflict

for the purpose for which they were collected, ie for the purpose of verifying the identity of the data subject, thereby

infringed the obligation laid down in Article 5 (1) (a) (b) of the General Regulation and also without

relevant legal title, thereby infringing the obligation laid down in Article 6 (1) of the General

ordinance.

Furthermore, the accused was found guilty pursuant to § 62 para. a) of Act No. 110/2019 Coll., as

has failed to fulfill an obligation under Articles 8, 11, 25 to 39, 42 to 49 of the General Regulation, or

Title II, in that at least from 1 July 2015 to 7 August 2018 in the ISoSS she did not lead

records of accesses of authorized staff to the system, ie

records to identify who has accessed the data of a particular data subject and for what

thereby infringing the obligation laid down in Article 32 (1) of the General Regulation.

At the same time, however, with regard to the provisions of Section 62, Paragraph 5 of Act No. 110/2019 Coll. it was again

waived the imposition of an administrative penalty.

It is necessary to add that by decision no. UOOU-09383 / 18-12 of September 11, 2019 was corrected obvious inaccuracy in the statement of the decision consisting in the replacement of Act No. 110/2019 Coll. for Act No. 101/2000 Coll.

However, the accused objected to the decision with a proper appeal in which she proposed the decision cancel. The reason for filing the appeal, according to the accused, was an incorrect evaluation of the documents and erroneous legal conclusions drawn from them, and through decomposition also has dispute legal issues.

In particular, the accused stated above all that she had drawn attention to the manner from the outset initiation of proceedings where, in its opinion, the Office cannot argue for the “uniqueness” of Section 62 (5) Act No. 110/2019 Coll., as this is an unusual provision and it is therefore necessary to proceed according to usual interpretative procedures and in the system of related legislation as a whole. According to The accused is also unique in its own way § 43 of Act No. 250/2016 Coll., on Liability for offenses and proceedings on them, and if the Office intends to decide by order, § 150 par. 1 is limited Act No. 500/2004 Coll., the Administrative Procedure Code, which allows for the imposition of obligations, and further § 90 para. 1 Act No. 250/2016 Coll., which contains an exhaustive list of options for decisions by order.

The accused further stated that the administrative body has an obligation in the notice of initiation inform the participant of his rights, which did not happen at the stage of issuing the order or later in the proceedings when the right to a fair trial and defense is vested in each party without distinction. According to The accused applies the same to defects in the statement of the order and the definition of the subject matter of the proceedings where you are she had to figure out what specific duty or principle she was supposed to break. The contested decision is already more specific than the order, but it is only the decision from which he learns the specific qualifications, which also cannot be considered in line with the principles of a fair trial.

In her argument, the accused also refers to the principles of criminal proceedings. According to the accused, they are

also inappropriate and inconvenient also the comments of the Office mentioned, inter alia, in the conclusion of the justification, because

pointed to the very basic principles of criminal law and due process, which administrative

the authority of the first instance describes it as "bizarre".

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The accused further rejects the argument concerning the need to conduct administrative proceedings and states that the administrative authority of the first instance incorrectly assessed the risk of processing and the alleged

the non-exceptionality of the legal logging requirement, here applied to the approaches of some

employees to the ISoSS system, resp. effectiveness of the required scope of logging, in comparison

risks to the rights and freedoms of data subjects in the present case. It recalls in particular Article 5

paragraph 1 (a) (f) and Article 32 (1) of the General Regulation, which stipulate that the measures taken

to ensure the processing of personal data should be commensurate with the risks and thus contradict each other

flat-rate approach of the repealed Act No. 101/2000 Coll. Article 32 of the General Regulation

then to address the level of security commensurate with the risks involved, without inferring

that the access of persons authorized to process personal data will also be unauthorized. Yippee

therefore the substantial risk of a particular processing, or at least its type, and the possibility of misuse,

not its size (large and significant, as stated by the accused, is also the real estate cadastre, although to

anyone can enter it) or the nominal importance of the system. As the accused also pointed out,

the accused knows and knew when which user logs into the system, in which modules he works and how

long. Detailed logging did not take place in cases where the user within the defined

the role of activity will get to the information that is already known to him from his activities within his

service office, or a specific department that deals with activities in the area

human resources.

He further states that the administrative body of the first instance contradicts the evidence and the objective reality

neglects the existence of a legal title for the processing of personal data in the event of identification of part

foreigners and the storage of some of their personal data when they claim that such a title is missing or missing.

It should have been based on Article 6 (1) (a). c) and e) of the General Regulation. In that
context, attention was also drawn to archival purposes, respectively. was dependent on the obligation to process
precise personal data and obligations to the Police of the Czech Republic.
The accused also stated that she had already taken measures to eliminate the defective condition found
however, it is not clear that the Office would take this into account in its decision-making
procedure.
II.
The appellate body reviewed the decision in its entirety, including the previous process
its release and first dealt with the arguments of the accused.
In this context, he found above all that in the existence of a comprehensive administrative regulation
punishment considers references accused to criminal law to be irrelevant. The provisions of § 62 themselves
paragraph 5 of Act No. 110/2019 Coll., the application of which in this case is primarily concerned, then
orders the Office to refrain from imposing an administrative penalty in the event of a misdemeanor, if possible
the controllers and processors referred to in Article 83 (7) of the General Regulation. She is undoubtedly accused
administrator pursuant to Article 83 (7) of the General Regulation. From the wording of § 62 paragraph 5 of Act No. 110/2019
Coll.
however, it is clear that this provision did not establish procedural immunity for the accused
guilty of a misdemeanor or other instance in misdemeanor proceedings;
this only mandates the waiver of the imposition of an administrative penalty. Therefore, if circumstances arise for
conduct of misdemeanor proceedings, the procedure pursuant to Section 90 (1) of the Act is obviously not excluded
No. 250/2016 Coll. enabling the offense to be decided by an order. The second sentence last
of the cited provision must be understood as a list of the types of sanctions permissible, which in no way
does not preclude the waiver of administrative punishment in the sense of § 62 paragraph 5 of Act No. 110/2019 Coll.

Such a procedure is not excluded by the provisions of Section 90, Paragraph 2 of Act No. 250/2016 Coll. and is fully
in accordance with the principle of economy of proceedings according to § 6 of the Administrative Procedure Code. Link

accused to

provisions of Section 43 of Act No. 250/2016 Coll. then it is completely inconvenient as a condition for

its application is the conduct of certain proceedings. It can therefore be concluded that the first sentence of Section 90 (1) of the Act

No. 250/2016 Coll. does not contain the imposition of an obligation (penalty) as a necessary condition for use

institute of an order in misdemeanor proceedings. Because it is possible to declare a command

violation of the law.

It should also be recalled that the matter has already been sufficiently clarified in the

including the issue of remedying the situation, which is another reason for resolving the case in the form of an order, while

in this case, the accused does not pay any costs. The appellate body admits that

It was an innovative solution that is based on a special, recently adopted, and therefore still

practically unapplied legislation, however, in no way can we speak of an excess which

should have a negative (and non-reparable) effect on the overall outcome of the proceedings. About that, after all

The very fact that the accused challenged the order in question was properly challenged. Moreover

even if the issue of the order in question were found to be defective, it would be necessary to have proceedings for

initiated on the basis of a notification from the Office ref. UOOU-09383 / 18-5 of 3 July 2019 since

this notification meets the requirements specified in Section 46, Paragraph 1 of Act No. 500/2004 Coll., whereby

according to § 46 paragraph 3 of Act No. 500/2004 Coll. the notice of initiation may be linked to another

act in the proceedings. The appellate body therefore considers the proceedings to be properly initiated and conducted, since

the accused was able to defend his rights, as evidenced by the record of access to the administrative file

proceedings (ref. UOOU-09383 / 18-6 of 10 July 2019) as well as the accused's statement on the

Decision (Ref. MV-92156-5 / OBP-2019 of 18 July 2019). In this regard, the appeal

The body also recalls the judgment of the Regional Court in Brno file no. No. 62 Ca 1/2007 of 27 September

2007, according to which it forms part of the decision documents to which it must be a party to the administrative proceedings

given the opportunity to comment is not the concept of an administrative decision to be an administrative body

just released; the administrative body is not obliged to acquaint the participant in the administrative proceedings with

conclusions to which, on the basis of the assessment of the documents with which the party is acquainted, the party in its proceedings

the decision is yet to come.

Nor can the defendant's opinion on the insufficient specification of the obligation be agreed

or the principle which it should have infringed, since the administrative decision clearly in the contested decision

first instance formulated the individual statements so that it was quite clear what the provisions were

violated by the conduct of the accused. The objection of the accused regarding the specificity of the statements can then only be reached

state that the specifications of the violations which the accused are accused of have been described

in the operative parts,

divorced

in the recitals. It is also possible to recall the judgment of the Municipal Court in Prague file no. No. 5 A

142/2015 of 15 November 2018, where in recital 23, following on

Resolution of the Enlarged Senate of the Supreme Administrative Court file no. No. 2 As 34/2006 of 15 January

2008, states: “It is sufficient because the act is defined by such features that together with it

by setting it into a specific local and time frame will undoubtedly distinguish it from another

similar conduct. 'The contested decision undoubtedly satisfies that requirement.

In view of the above, it can be further stated that the term "bizarre", ie special, or. strange,

expresses the assessment of the first instance body (not a comment) in relation to the argumentation

accused of uncertainty of the decision and the impossibility of defending, as arguments

tense and deviating from the boundaries of the established discourse.

decision and then closer

how to order

so

For these reasons, the appellate body cannot agree with the defendant's remark

in the note ref. MV-92156-5 / OBP-2019 of 18 July 2019 and de facto supported

even in the context of an appeal, according to which the case should be adjourned or, if necessary, proceeded in accordance

with

§ 60 of Act No. 110/2019 Coll. and both parties should not be unnecessarily burdened. Acting accused

has reached a certain degree of severity, resp. social harm (see justification

of the contested decision and the text below), it was therefore necessary to blame the offense

however, the law requires the administrative authority to impose it

waive the administrative penalty (see also above). If the defendant's opinion were taken into account, then he would lead

to the conclusion that would make § 62 paragraph 5 of Act No. 110/2019 Coll. completely unusable as any

proceedings under this provision would always be burdensome and uneconomical, and therefore

unnecessary and should never be kept. It may be added that in this regard the administrative

the term "bizarre" used by the first instance authority actually expresses the use of argument

methods of reductionis ad absurdum, which is a standard part of legal instruments.

The defendant 's objection to logging (that is, keeping records of access to personal data) is

it should be noted that the matter was sufficiently clarified during the inspection. At the same time it is necessary

to remind that the offense according to § 62 par. a) of Act No. 110/2019 Coll. resting

The omission to make relevant records in ISoSS covers the period between 1 July 2015

until 7 August 2018, therefore the period in which the obligations set out in § 13 resp. § 13 paragraph 4

letter c) of Act No. 101/2000 Coll., while it follows from the filed appeal that the accused of these

duties. The only problem thus remains whether the repeal of Act No. 101/2000 Coll.

and its replacement by the existing regulation represented by the General Regulation (in this case

in particular Article 5 (1) (a) thereof, f) and Article 32) and Act No. 110/2019 Coll., which is already an obligation

does not explicitly impose logging, it constitutes a more favorable regulation for the accused

to state a conclusion about committing an offense pursuant to § 62 para. a) of Act No. 110/2019 Coll. In that

In this context, the accused de facto limits her argument to recalling the degree of risk

as a key factor in keeping records of access to personal data. With this

can generally be agreed, but at the same time it must be stated that the accused
did not provide any specific argument that would call into question the need for logging in relation to ISoSS.
In particular, such an argument is not that the access of the entitled person may be at the same time
even unauthorized, as part of proper logging is to state the reason for access to personal
data enabling its subsequent verification. Nor is it possible public accessibility
personal data processed, as these are to be protected from unauthorized use
by amending. However, the Appellate Body is of the opinion that the level of risk, which is very high,
in this case it also corresponds to the classification of ISoSS as an important information system
pursuant to Act No. 181/2014 Coll., on Cyber Security and on Amendments to Related Acts,
resp. Decree No. 317/2014 Coll., on important information systems and their determining
criteria. In addition, unauthorized alteration, destruction or disclosure of personal data
contained in the ISoSS would undoubtedly have a serious impact on the rights and freedoms of those concerned
natural persons (eg doubts would arise as to their qualifications, they could be exposed)
certain pressures, etc.).
The appellate body then generally takes the view that logging of access to personal data is still after
repeal of Act No. 101/2000 Coll. one of the most basic elements of their security, namely
even with a preventive effect and must therefore be perceived
as a completely normal part
automated processing. In the case of ISoSS, moreover, it is an information system
in which sense of § 2 letter d) of Act No. 181/2014 Coll. information breaches could
to reduce or significantly endanger the exercise of the powers of a public authority, resp. should be significant

negative impact on the rights of data subjects, which specifically requires, inter alia, to ensure proper
logging, which the accused did not receive.
As regards the offense under § 62 para. b) of Act No. 110/2019 Coll., were accused
in the context of an appeal, Article 6 (1) is mentioned in particular as the legal titles of the processing in question

letter c) and e) of the General Regulation. However, these legal titles could generally be accepted
provided that the relevant legal obligation is defined by the provisions of §§ 180-183
Act No. 234/2014 Coll., while the accused, as a state body, may exercise this power
only within the limits set by law and in the manner prescribed by law (see Article 2 of the Charter
fundamental rights and freedoms and Article 2 of the Constitution of the Czech Republic). The above provisions of the law
No. 234/2014 Coll. however, the accused do not impose the processing of personal data in question. The same thing
also applies in the decomposition of the said obligation pursuant to Section 48, Paragraph 2 of Act No. 234/2014 Coll., which is
imposed
exclusively to law enforcement authorities and not to the accused. The personal data in question then
apparently they are not processed in the regime of Act No. 499/2004 Coll., on archiving and the file service,
which refutes the allegations made regarding processing for archival purposes. As for duty
process accurate personal data, the accused did not specifically explain how the management
of the set of personal data in question could contribute to the fulfillment of this obligation. In addition, it is necessary
to point out that, in this case, the relevant data should be updated regularly, and
otherwise, using this data could be counterproductive. Accused so
by the processing in question, it clearly exceeded the available legal title, thereby infringing it
and the obligation under Article 5 (1) (a) (b) of the General Regulation. In conclusion, it should be added that for
in the case of qualification of the substance of the offense, the change in legislation is irrelevant,
as previous and current legislation contain similar institutes. The offense then,
which the Appellate Body considers it necessary to recall, as it expressly states
statement I.1. decision consists in storing personal data contained in personal copies
documents. It is therefore not the requirement of documents, resp. copies for one-off purposes
verification of identity, as this in itself cannot be understood as the processing of personal data,
and therefore not to evaluate through the prism of the General Regulation and Act No. 110/2019 Coll.
Moreover, it is clear from the appeal that the defendants admit, in principle, of the breach of their obligations, since
recalled that certain corrective measures had been taken as a result of the inspection.

This fact would obviously be important in the context of the consideration of the sanction, resp. in case of storage fines regarding its acreage. Due to the statutory waiver of storage any administrative penalty that would probably correspond to a fine of the order of hundreds of thousands of CZK, however, this circumstance must be considered irrelevant.

In that regard, the Board of Appeal notes, in addition to all the foregoing, that interpretation of the applicable law encounters the tension created by the Czech legislature between the construction Act No. 110/2019 Coll. and the text of the general regulation, resp. for the purposes of the general regulation anticipated discretion of the national legislator and its concrete implementation in the adaptation of the law.

The legislator proceeded from the option provided for in Article 83 (7) of the General Regulation, according to which anyone can Member State shall lay down rules as to whether and to what extent administrative charges may be imposed fines on public authorities and public bodies established in that Member State.

Following this, the provisions of Section 62, Paragraph 5 of Act No. 110/2019 Coll. instructs the Office to abandon from the imposition of any administrative penalty (even if) in the case of the controller and processor listed in Article 83 (7) of the General Regulation.

If now in the context of § 62 paragraph 5 of Act No. 110/2019 Coll. apart from the extension of the exception the possibility not to impose "administrative fines" (administrative fines; administrative amendments) the inability to impose "administrative penalties", it can not be overlooked that the very non-punishment defined entities is not the ultimate aim of the general regulation. Article 84 of the General Regulation requires States to lay down rules on other sanctions to be imposed for infringements of this Regulation, in particular for infringements which are not subject to administrative fines pursuant to Article 83, and shall all measures necessary to ensure their application. These sanctions must be effective, proportionate and dissuasive. In other words, recital 152 confirms this: "Unless there are administrative sanctions harmonized by this Regulation or, where appropriate, in other cases such as serious

infringements of this Regulation, Member States should put in place a system to ensure that

proportionate and dissuasive fines. The nature of these criminal or administrative sanctions should be

determined by the law of a Member State. "

Absence of a comprehensive reaction by the legislator to his own decision to make use of the possibility of Article 83

Article 7 of the General Regulation thus leads to a requirement for such an interpretation and application of the decisive one

law (including procedural), which will give maximum passage to the effectiveness of management and in which others will

stand out

(non-punitive) legitimate purposes of the proceedings, eg preventive purpose and educational purpose. In addition to purposes

and the guidelines flowing directly from the general regulation, then no other level can be left out

consequences of the current legislative constellation, which makes inequality in question difficult to defend

effectiveness of punishment (coercion) established between the entities to which they are imposed comparable

responsibilities.

Therefore, the appellate body rejected the accused's argument and did not find it after an overall examination

no reason to make the decision illegal. Nor did the appellate body find either

no errors in the procedure of the administrative body of the first instance. Based on all of the above

therefore ruled as set out 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, December 5, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)