

OPINION OF THE PERSONAL DATA PROTECTION OFFICE OF THE SLOVAK REPUBLIC

Recently, many municipalities and towns have approached the Office with requests regarding the correct the procedure for service of documents in administrative proceedings (in particular documents by which they themselves are administrative) proceedings begin and the decision in the main proceedings) and when looking at the file kept within the administrative proceedings, with regard to the protection of personal data.

With regard to the service of documents, the issues of municipalities and cities concerned in particular the issue of service decisions with several parties to the administrative procedure and service of documents by public decree.

In relation to service, it should be noted that this is an institution which has an irreplaceable place

in administrative proceedings, as without proper service of documents defined by law

in administrative proceedings, it is not possible to initiate these proceedings, in administrative proceedings already initiated as well as the proper termination of the proceedings. Documents in administrative proceedings administrative body to the participants administrative proceedings is sent in full, without modifications, as it depends on the content of these documents also the course of administrative proceedings and the participant in administrative proceedings has by law no. 71/1967 Coll.

on Administrative Procedure (Administrative Procedure Code) as amended (hereinafter referred to as the “[Administrative Procedure Code](#)“) granted various rights and obligations that relate to the facts found in the administrative proceedings

and in most cases contained in these documents (eg the right to comment on the documents necessary for issuing a decision, proposing evidence, the right to appeal, an action, etc.).

Intervention by an administrative authority in documents notified to a party to an administrative proceeding (eg by anonymising the personal data of other participants in the administrative proceedings

in the decision) could defeat the purpose of the individual rights of the party to the administrative proceedings (eg a party to the administrative proceedings would not be able to question certain facts, etc.). **Documents**

(including decisions), which are the content of the administrative file in a specific administrative proceedings and which are served on the parties to the administrative procedure in question to which it has jurisdiction party to the proceedings under the Administrative Procedure Code always have the right to express themselves, are delivered without intervention by the administrative authority to these documents, ie in non-anonymized form.

Delivery by public decree is, in addition to delivery in one's own hands, in another way service of documents in administrative proceedings. The Administrative Procedure Code lays down specific conditions when delivery by public decree applies. According to § 26 of the Administrative Procedure Code, the following shall apply form of service a) when the participants in the administrative proceedings are not known, b) when the participants stay administrative proceedings are not known; or (c) if a special regulation so provides [e.g. [the law no. 50/1976 Coll. on Spatial Planning and Building Regulations \(Building Act\) as amended regulations](#)]. The provision in question also regulates other conditions that must be met in order for it to be the document is duly served in this way.

Delivery by hand as well as delivery by public decree are equivalent forms of service of documents in administrative proceedings, therefore the above applies mutatis mutandis, and therefore documents delivered in administrative proceedings in the form of a public decree are delivered in unanonymized form.

Another similar issue is looking at the administrative file. Looking at the file is one of the fundamental rights of a party to an administrative procedure which he may assert at any time during the administrative procedure. Through this right, the party to the administrative proceedings acquaints with the documents for issuing the decision. Since the decision in the case has legal effects, interfering with the legal position of the parties to the administrative procedure, it is necessary that the party to the administrative proceedings is fully acquainted with all the facts and should have so opportunity to comment on all these facts (including any personal data).

Infringement of the right of access to the file could be caused by mechanical interference by the administrative party authority which would, in accordance with the administrative procedure, be a party to the administrative proceedings exercising that right provided an anonymised administrative file for inspection. **Participant in the administrative proceedings has, in the sense stated from the point of view of personal data protection, the right to inspect the file, which**

is not anonymized, unless a special law provides otherwise (eg § 100 par. 6 [of the law no. 18/2018 Coll. on Personal Data Protection and on Amendments to Certain Acts](#) ¹).

It appears in relation to the service of documents as well as the inspection of the administrative file problematic third category of the participant in administrative proceedings defined in § 14 par. 1 correct of order. According to this provision, a party to the administrative proceedings is also the one who claims that he can be by decision in their rights and legally protected interests or obligations directly affected until proven otherwise. Such a category of the party to the administrative proceedings is equivalent to other categories of participants in administrative proceedings defined in § 14 of the Administrative Procedure Code order and has the same rights and obligations as other participants in administrative proceedings, until the administrative authority validly decides to exclude him from the administrative proceedings. **For that reason, the procedure is also higher in relation to such a party to the administrative proceedings in both the service and the exercise of the right of inspection to the administrative file.**

We note that in both cases, by publishing or making available personal data within the delivered documents resp. within the documents that are provided to be viewed, the **personal data contained in these documents do not lose the status of personal data and for their possible further processing it is necessary to have adequate legal basis** within the meaning of Art. 6 Regulations ² resp. § 13 of Act no. 18/2018 Coll.

¹ According to § 100 par. 6 of Act no. 18/2018 Coll. *if the proposal does not contain a requirement to keep the identity of the petitioner confidential, the Office shall process the proposal without secrecy of the personal data specified in the proposal. If there is a request for confidentiality in the proposal identity, but the nature of the proposal does not allow it to be processed without giving any information about the person making the proposal the Office shall notify the applicant after finding that fact, while notifying him that in the application will continue only if the applicant gives the Office consent to the indication of the data or data of his / her authority within the specified time limit person needed to complete the design.*

² [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to processing of personal data and on the free movement of such data, repealing Directive 95/46 / EC \(Data Protection Regulation\)](#).