

OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-11173 / 16-33

DECISION

The Chairman 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 a), § 152 par. 5 and § 90 par. 1 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-11173 / 16-17 of 2 January 2017

is annulled and the case is returned to the administrative authority of the first instance for a new hearing.

Justification

I. Definition of the matter

(1) By a decision of the Office for Personal Data Protection (hereinafter the "Office") no. UOOU-11173 / 16-17 ze on January 2, 2017, Mr. XXXXXX was born on XXXXXX, apartment XXXXX (hereinafter "accused") found guilty of committing offenses under Act No. 101/2000 Coll., on the protection of personal data data in the form of negligence which he should have committed as a member of the preparatory Committee in connection with the amendment of the proposal for the registration of religious society XXXXXX, delivered on 30 November 2015 to the Ministry of Culture, by:

I. processed inaccurate personal data XXXXXX in the range of name, surname, address permanent residence, date of birth and signature, and XXXXXX in the name, surname, permanent residence address, birth number and signature, indicated on signature sheets No. 8 and 9, as they were not persons professing the XXXXX religious society, thereby violated the obligation stipulated in § 5 par. 1 let. c) of Act No. 101/2000 Coll., ie

the controller's obligation to process only accurate personal data obtained in accordance with
with this Act and, if necessary, update personal data,

II. collected personal data XXXXXX in the range of name, surname, permanent address
residence, date of birth and signature, and XXXXXX in the range of name, surname, address
permanent residence, birth number and signature, not openly, resp. under the pretext of another
purpose than was presented to the data subject, as they were not persons reporting
to the religious society XXXXXX, thereby violating the obligation set out in § 5 par.

1 letter g) of Act No. 101/2000 Coll., ie the obligation of the administrator to collect personal
data only openly, do not collect personal data under the pretext of another purpose
or other activities,

III. insufficiently

informed the data subjects

(XXXXXXX and XXXXXX) about that

by providing their personal data and signing the signature sheet they become
persons who join the XXXXXX religious society and after registration by its members,

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thereby violating the obligation stipulated in § 11 paragraph 1 of Act No. 101/2000 Coll., ie
the controller 's obligation to inform the data subject when collecting personal data
to what extent and for what purpose personal data will be processed, by whom and by whom
will process personal data and to whom the personal data may be
made available if the data subject is no longer known. The administrator must
inform the data subject of his right of access to personal data, the right to
correction of personal data, as well as other rights stipulated in § 21,

thereby committing an offense under Section 44, Paragraph 2, Letter b) of Act No. 101/2000 Coll., because
processed inaccurate personal data, in point II. offense according to § 44 par. 2 let. c) of the Act
No. 101/2000 Coll., as he collected personal data in a way that does not correspond

intended purpose and in point III. offense according to § 44 par. 2 let. f) of the Act

No. 101/2000 Coll., as he did not provide the data subject with information to the extent or by law and therefore a fine of CZK 2,000 was imposed.

(2) Decision of the Office no. UOOU-11173 / 16-17 of 2 January 2017 subsequently confirmed by decision of the President of the Office ref. UOOU-11173 / 16-23 of March 7, 2017, however the accused challenged the administrative action. On its basis, the Municipal Court in Prague judgment no. 2A 53 / 2017-31 of 30 March 2021 (hereinafter "the judgment") of the decision President of the Office Ref. UOOU-11173 / 16-23 of March 7, 2017 canceled the case returned to the Office for further proceedings.

(3) As stated in the grounds of the judgment, the accused was denied to the defendant in accordance with the Office's procedure

the right to examine and have witnesses heard against them, namely XXXXXX and XXXXXX. Communication

These two persons (whether written or oral) were key sources for extradition

of the contested decisions and constituted the evidence on which the Office based its conclusion that

the accused committed the alleged offenses, and at the same time did not have any in the case of the offense proceedings

the possibility of questioning or having questioned such persons, thereby exercising the right guaranteed by Article 6

paragraph 3 (a) d) Convention for the Protection of Human Rights and Fundamental Freedoms. In this context, then

reference was made to the relevant case law, in particular the judgment of the Municipal Court in Prague 5

A 97 / 2014-52 of 23 November 2018, according to which:

"Although at first glance it may seem irrelevant whether a certain person states certain facts

In an inspection without a procedural status, or in an administrative proceeding as a witness, the difference is

crucial. In the procedural position of a witness, the person is primarily obliged to tell the truth and nothing

not to remain silent (§ 55 para. 1 of the Administrative Procedure Code), under the threat of a sanction [§ 2 para. e) and 3

letter e) of Act No. 251/2016 Coll., on certain offenses; formerly § 21 par. 1 let. g) of the Act

No. 200/1990 Coll., on misdemeanors]. Furthermore, the administrative body is obliged to provide the witness with instructions

on his rights and obligations (§ 55 para. 5 of the Administrative Procedure Code) and to respect legal cases,

when interrogation is not possible. Finally, the hearing of a witness must be informed to the party concerned, who must be allowed to take an active part in the interrogation (Section 51 (2) of the Administrative Procedure Code), ie in particular, to be able to observe the lawfulness of the course of action and to ask the witness questions.

The above list is only demonstrative, but is sufficient to illustrate the difference in the procedural position of a witness from a person acting with the administrative authority in the context of the inspection. Especially in the case of administrative proceedings concerning administrative punishment, where the same applies in principle

standard of protection of the rights of the accused as in criminal proceedings, individual witnesses had to be properly to hear and enable the applicant to take an active part in those acts [Art. Article 6 (3) (a) d) Conventions on the protection of human rights and fundamental freedoms]. "

Both XXXXXX and XXXXXX should therefore be duly heard in the infringement proceedings in the status of witnesses, with the accused being allowed to take part in such an oral hearing

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proceedings where he should have had the opportunity to witness (either directly or through his agent) issues. The written or oral communications of these persons made in during the inspection carried out by the Office.

II. Assessment by the appellate body

(4) The Office is bound by the opinion of the Municipal Court in Prague expressed in the judgment (see § 78 paragraph 5 of Act No. 150/2002 Coll., Judicial Administrative Procedure Code).

(5) It should also be noted that the appellate body with regard to the provisions of § 152 para. 5 and § 90 par. 1 let. c) of Act No. 500/2004 Coll., as the accused would be in danger of harm due to loss of the opportunity to appeal, does not have legitimacy to decide the case so that the decision of the administrative body of the first instance ref. UOOU-11173 / 16-17 of

On January 2, 2017, it was amended in accordance with the requirements of the judgment.

(6) For the above reasons, the Appellate Body therefore ruled as stated in the operative part of this decision.

(7) In the subsequent proceedings, the administrative authority of the first instance should therefore act in accordance with the requirements of the judgment, ie in particular to conduct an interrogation of XXXXXX and XXXXXX so that it is the rights of the accused are respected. At the same time, however, it will be necessary to assess whether the liability for the offense has not ceased, especially whether the conduct in question is also an offense under the current one legislation, represented in particular by a Regulation of the European Parliament and of the 2016/679 of 27 April 2016 on the protection of individuals with regard to processing personal data and on the free movement of such data and repealing Directive 95/46 / EC (hereinafter "General Regulation") and Act No. 110/2019 Coll., On the processing of personal data. More specifically that is to say, it will first be necessary to assess whether the conduct in question constitutes an infringement Article 5 (1) (a) a) and d) of the General Regulation establishing the obligation of legality, correctness, transparency and accuracy and infringement of Article 13 of the General Regulation the data subject's right to information, and thus whether the conduct in question is a misdemeanor pursuant to Section 62 paragraph 1 (a) b) and c) of Act No. 110/2019 Coll.

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, May 28, 2021

Mgr. Jiří Kaucký

chairman

(electronically signed)