

GZ: 2020-0.385.423 from June 29, 2020 (process number DSB-D213.1042)

[Note editor: Names and companies, legal forms and product names,

Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as

their initials and abbreviations may be abbreviated for reasons of pseudonymization

and/or changed. Obvious spelling, grammar and punctuation errors

have been corrected.]

I N T E L L I N G S B E C H E I D

S P R U C H

The data protection authority decides against this within the framework of the official examination procedure

dr A\*\*\* (Responsible)

as a result of the representation of the person responsible against the

Mandate notification of March 30, 2020, GZ D213.1042 (2020-0.203.677), as follows:

1. The mandate decision dated March 30, 2020, with which the disclosure of

personal data, including health and patient data

of excerpts from patient letters, findings or other medical information

Records/logs on the personal Facebook page of the

Responsible [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) as well as on the official

Facebook presence of the Vienna Medical Association <https://www.facebook.com/aekwien/>

as well as other public Facebook groups/pages and social media

Platforms was banned with immediate effect, will - as far as the

personal

Facebook site

of

responsible

[https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) concerns - confirmed.

2. The suspensive effect of any timely submitted and

admissible complaint according to Art. 130 Para. 1 Z 1 B-VG is excluded.

Legal basis: Art. 8 and 11 of the Charter of Fundamental Rights of the European Union (EU

GRC), OJ No. C 326 of 26.10.2012, p. 39; Art. 4 nos. 1, 2, 7 and 15, Art. 5, Art. 6, Art. 9,

Article 57(1)(a) and (h) and Article 58(2)(d) and (f) of Regulation (EU) 2016/679

– General Data Protection Regulation (GDPR), OJ No. L 119 of 05/04/2016, page 1; §§ 1 para. 1,

22 Paragraph 4 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended; §§ 39, 57 paragraphs 1 and 3

the General Administrative Procedures Act 1991 (AVG), Federal Law Gazette No. 51/1991 as amended; § 13

Paragraph 2 of the Administrative Court Procedure Act – VwGVG, Federal Law Gazette I No. 33/2013 as amended.

A. Submissions of the parties and course of the proceedings

REASON

1.

The data protection authority led on the basis of a submission by the Medical Association for Vienna

dated February 17, 2020 and a supplementary submission dated March 9, 2020 under the

GZ D213.1042 a procedure according to Art. 58, 57, 55 in conjunction with Art. 1 DSGVO ("official

test procedure"). The data protection authority was informed that Dr. A\*\*\* as

Responsible on his personal Facebook page [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***)

as well as

on

to the

official

Facebook presence

the medical association

for Vienna

<https://www.facebook.com/aekwien/> personal health and patient data in

Form of excerpts from patient letters, findings or other medical

“Post” records/protocols and thus disclose them.

The data published on Facebook would include patient names, diagnostic data, medication data, admission and discharge data from hospitals as well as

Count social security numbers. To illustrate data breaches

by the person responsible, the description of the facts of the Medical Association for Vienna as

A selection of screenshots of various Facebook postings are attached to the attachment.

Cease and desist orders from the Vienna Medical Association and disciplinary proceedings against the person responsible could not have prevented the person responsible so far,

Health data of his patients continue to be publicly accessible

Post to social media platforms. The web administrator of the Vienna Medical Association

was instructed to immediately delete all Facebook postings from the person responsible

the Facebook presence of the Vienna Medical Association, which personal data

included to delete. In this regard, there is also constant monitoring of the Facebook

appearance of the Vienna Medical Association. Especially on the personal Facebook page

of the person responsible [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) would still be

find numerous Facebook postings from the person responsible, which personal

contained health and patient data.

2.

With the mandate decision of March 30, 2020, GZ D213.1042 (2020-0.203.677).

the controller the disclosure of personal health and

Patient data in the form of excerpts from patient letters, findings or others

medical records/protocols on the personal Facebook page of the

Responsible [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) and on the official Facebook page

the Vienna Medical Association <https://www.facebook.com/aekwien/> and other public ones

Facebook groups/pages and social media platforms will be effective immediately

prohibited.

3.

In a letter dated May 14, 2020, the person responsible raised - in a timely manner - in accordance with § 57 para. 2 AVG Presentation against the mandate decision.

4.

The data protection authority then initiated the investigation. With writing of May 25, 2020, the Data Protection Authority asked the person responsible to comment with regard to the data processing under examination and informed that the Mandate decision - despite timely submission of the presentation - legal effectiveness developed and enforceable.

The person responsible was also asked to do so within a period of two weeks to prove that he has already responded to the official request in accordance with the mandate decision has complied and the disclosure of personal health and has ended patient data on social media platforms. The person responsible was also informed that, to the extent that this data is still publicly available, the Data Protection Authority the enforcement authority under the Administrative Enforcement Act 1991 - VVG will request the enforcement of the mandate decision and at the same time the initiation of administrative penal proceedings against the person responsible.

5.

With a submission dated June 11, 2020, the person responsible submitted his statement and brought how follows (playback as in the original, formatting not 1:1

Played):

POSITION T H E E

The person responsible answers in the present case as follows:

a) On what specific legal basis is the publication of

based on personal health and patient data?

Data has only been released to the extent necessary for tracking

Processes in the service of patient safety for authorized persons (e.g.

in the ELGA law

specified) are required. See also: Entire

Legislation for the Physicians Act 1998, version of 18.01.2020, Federal Law

on the exercise of the medical profession and professional representation of doctors

(Physicians Act 1998 – ÄrzteG 1998) StF: Federal Law Gazette I No. 169/1998 (NR: GP XX RV 1386

AB 1400 p. 142. BR: AB 5785 p. 645.) (CELEX no.: 378L0686, 378L0687,

381L1057,

393L0016)

Article 54, paragraph 2

no. 4 a)

and b): Background:

Patient safety is the most important focus for every therapist/doctor

actions, also here with the person responsible. To protect these higher quality

It is in the interests of public health care and the administration of justice

sometimes also necessary to criticize and process-responsible

to provide cross-departmental information about grievances. That's what we stand for today

Various platforms are available such as "CIRS-Medical" and much more to

necessary

contemporary transparency

and communication culture

in the

to promote the medical field ("Just Culture"). This is also the case with so-called

"Social media" possible, of course with protection of the privacy of the

affected patients.

Humanly understandable, factual but unprofessional are anonymous

personal attacks by those criticized against those who uncovered abuses.

Rather, these should be presented and discussed transparently in order to

initiate necessary system improvements. Here is an example

Facts described: On November 8th, 2019 we received a verified electronically

ELGA nursing discharge letter from a patient

following details: "We

report on the inpatient stay of Ms. XX, born on XXXX.1950,

which was cared for in the lung station L 3 from 19.10.2019 to 12.11.2019.

Diet: self-employed, last meal: 12.11.2019 at 8 a.m." (Note: 4 days

after her death!) "Relatives from form: Mother: XX A-\*\*\*\* Vienna XX-Gasse XX

Tel. XXXXXXXX" (Note: the mother was already in a house at the beginning of 2018

deceased in the same hospital association!)

On the same day (November 8th, 2019) a short time later we also received it electronically

information from the FSW "Pat. died on November 8th, 2019" Here it was - officially

"verified" - obviously wrong information about "quality assured"

sent electronically. Unfortunately, we have already been able to do similar things several times

processes

determine ... The facts were sent by us to the

patient advocacy reported. Even if it concerns an already dead person: the

Quality of the content of various medical communications, usually yes for

patients who are still alive is often similar and thus endangers the

patient safety!

b) If the processing of personal data is based on consent

iSv Art. 4 Z 11 DSGVO is supported, would have to be explained in more detail:

In what way and under what circumstances is such consent

caught up? The Data Protection Authority

is possibly an excerpt of a

to submit a declaration of consent. A consent for the processing of

In any case, health data must be provided expressly (cf. Art. 9 Para. 2 lit. a

GDPR). How is it ensured that the right of a data subject to have their

revoke consent at any time, can be exercised? The revocation of

Consent must be as simple as giving consent (cf. Art. 7

Paragraph 3 GDPR). c) How are the data protection information obligations

implemented according to Art. 13 or 14 GDPR? d) How is it ensured that a

affected person from their other data protection rights

(cf. Art. 12 ff GDPR) can make use of?

Patients are treated in the manner specified in the ELGA and Doctors Act per

Notice in the ordination informs about their rights and the responsible person is standing

Always available for you as a contact person. See in particular

also § 51. ÄG

e) You will be asked to provide a list of processing activities iSv

Art. 30 GDPR. lies by

f) Was a

Data protection impact assessment iSv Art. 35 DSGVO carried out and if not,

why was this omitted? If so, is the appropriate one

submit a data protection impact assessment.

The risk mentioned in particular in Para. 1 Art. 35 GDPR corresponds to that in

Risk of documentation regulated by various laws (ÄG, ELGA-G., etc.).

standard medical processes. As can be seen under e), this is done with

Methods of various certified providers. In particular, there is none of the

risks mentioned in Art. 35 Para. 3.

## B. Subject of the proceedings

The subject of the proceedings is the question of whether the mandate decision as a result of the timely and permissible performance is to be confirmed, canceled or amended.

## C. Findings of Facts

Dr A\*\*\* is a general practitioner in \*\*\*\* Vienna.

Dr A\*\*\* operates a personal Facebook page at [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***). The

Content published on this Facebook page can be viewed by all Facebook users  
be viewed.

Evidence assessment: These findings result from the notification initiating the proceedings  
of the Vienna Medical Association and the statement by Dr. A\*\*\* of June 11, 2020 and one  
official research

the data protection authority

on

the

Facebook site

[https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) (accessed on 06/23/2020).

Dr A\*\*\* posted excerpts from on his personal Facebook page

Patient letters, findings and other medical records/protocols. to the on

The data published on Facebook include patient names, diagnostic data,

medical diagnoses, medication data, admission and discharge data from

hospitals, patient social security numbers, and the names of

treating physicians.

Evidence assessment: The findings result from the credible inputs of the

Medical Association for Vienna from February 17, 2020 and March 9, 2020 as well as from the submission

transmitted screenshots of the Facebook postings that are the subject of the proceedings, as well as



also from official research by the data protection authority on the public

available on Facebook [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) (accessed on March 30, 2020).

Some of the Facebook postings sent by the Vienna Medical Association

is

in the

(decision)

time

not

more

on

the

Facebook site

[https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) publicly available.

Evidence assessment: The findings result from a comparison of the ex officio

Research by the data protection authority on the publicly accessible Facebook page

[https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) from 03/30/2020 and from 06/23/2020. On 03/30/2020 were

the content displayed by the medical association is also public for the data protection authority

available. On June 23, 2020, most of the content is no longer publicly available. The

Request by the data protection authority within a period of two weeks

to prove that the official request according to the mandate decision

has been complied with and the disclosure of personal health and

Patient data on social media platforms has ended, Dr. A\*\*\* not by the way

complied.

At the present (decision) point in time, however, there are still the following

excerpts

out of

patient letters,

findings

and

other

medical

records/logs

find or are in part

following new

content

added:

[Editor's note: Image files (Facebook screenshots) cannot be displayed in RIS; It

were photos/screenshots of medical records from which data can be derived

Medications, medical diagnoses, doctor visits, disability reports and

obtained from the doctor treating you.]

Evidence assessment: The findings and the screenshots result from another

ex officio research by the data protection authority on the publicly accessible Facebook

Page [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) (accessed on June 23, 2020).

There are no entries with pictures of the Medical Association for Vienna on the Facebook page of the Vienna Medical Association

visible to those responsible.

Evidence assessment: The findings are based on the credible statements of the

Medical Association for Vienna, according to which they regularly update their Facebook page for entries by the

responsible and deletes such posts immediately from their side, further on a

ex officio research by the data protection authority on the Facebook page of the medical association

for Vienna (retrieved on June 29th, 2020), whereby the data protection authority in its official

Research did not find any entries by the person responsible.

D. In legal terms it follows that:

Regarding point 1:

1. On the official examination procedure and mandate decision

The data protection authority initiated on the basis of Article 58 (1) (b) GDPR

ex officio review procedure ("data protection review") against Dr. A\*\*\* a.

With the mandate decision of March 30, 2020, to GZ D213.1042 (2020-0.203.677).

dr A\*\*\* the disclosure of health and patient personal information in the form

of cutouts

from patient letters, findings

or

other

medical

Records/Logs

on

the

personal

Facebook site

[https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) and on the official Facebook page of the Medical Association

for Vienna <https://www.facebook.com/aekwien/> and other public Facebook

Groups/pages and social media platforms will be banned with immediate effect.

As stated above, this mandate decision was apparently taken as an opportunity

remove some of the published Facebook posts. However, in

Preliminary proceedings – as also noted – revealed that on the Facebook page

photos/screenshots of medical records are still publicly available.

The subject matter of the presentation procedure in question is the mandate decision

of the data protection authority, whereby the data protection authority confirms the mandate

or change (Hengstschläger/Leeb, General Administrative Procedures Act, § 57, margin no. 50). While the amendment in every direction, ie in favor of, but also at the expense of Party can take place, the authority is to be initiated in accordance with § 57 para. 3 AVG Investigative proceedings are no longer bound to the mandate decision, but are within the meaning of the § 39 AVG held to proceed ex officio. This also includes that authority can include new procedural results in the assessment (cf. the finding of Administrative Court of January 21, 1997, ZI. 95/11/0396, as well as the decision of the Administrative Court of October 22, 2003, ZI. 2002/09/0048).

## 2. On the distribution of roles under data protection law

Determining the distribution of roles under data protection law

is crucial

Meaning,

there

is determined who

for

compliance

the

respective

privacy policy is responsible.

According to Art. 4 Z 7 GDPR, that natural or legal person, authority, institution or another entity responsible for processing, alone or jointly with others decides on the purposes and means of processing personal data.

Included

the key criterion is the decision component. The role of

Responsible arises primarily from the fact that a specific body

has decided to process personal data for its own purposes. The

"Purpose" describes an expected result, while "means" describes the way  
specify how the expected result is to be achieved (cf. Art. 29 Working Party,

Opinion 1/2010 on the concepts of "controller" and

"Contract processor", WP 169, 00264/10/DE, S 15 ff, still with reference to Art. 2 lit. d of  
Data Protection Directive 95/46/EC).

dr A\*\*\* operates a personal one at [https://www.facebook.com/dra\\*\\*\\*](https://www.facebook.com/dra***) - as noted

Facebook page, on which, among other things, he also posted the subject matter of the test  
published. In his statement, Dr. A\*\*\* himself states that he has the data for

published for the purpose of patient safety and to criticize abuses, and

also refers to itself as the "responsible person". dr A\*\*\* is therefore unequivocally as

Responsible according to Art. 4 Z 7 DSGVO for this Facebook page.

### 3. Processing of personal data, including health data

Personal data within the meaning of Art. 4 Z 1 GDPR is all information that  
relate to an identified or identifiable natural person; as identifiable

a natural person, directly or indirectly, in particular by means of attribution

to an identifier such as a name [...] or to one or more special ones

Characteristics expressing the physical [...] or social identity of that natural person  
are.

According to Art. 4 Z 15 GDPR, "health data" is personal data relating to

the physical or mental health of any natural person, including the

Provision of health services, obtain and from which information about  
their state of health.

According to Art. 4 Z 2 GDPR, "processing" means anyone with or without help  
process carried out by automated processes or any such series of processes in  
connection with personal data such as collecting, capturing, the

organisation, arrangement, storage, adaptation or modification, reading out, the retrieval, use, disclosure by transmission, dissemination or any other form of provision, matching or linking, restriction, the erasure or annihilation.

In the judgment of November 6, 2003, C-101/01, the ECJ ruled that a

Action consisting of referring to different people on a website

and these either by their name or in some other way, such as by stating their phone number or through

Information about

their employment or

her

Leisure activities, to make recognizable, a "fully or partially automated

Processing of personal data" within the meaning of Article 3(1) of Directive 95/46

[now Art. 2 Para. 1 GDPR].

For the content under review, which is on the Facebook page of the person responsible

are published, these are photos/screenshots of medical records

those

data on medications, medical diagnoses, doctor visits,

Obtain notifications of incapacity for work, doctor treating you, etc. Even if in

In connection with this data, the name of the patient is not mentioned directly or

is evident, this does not change the qualification as personal data:

With regard to Article 2 lit. a of Directive 95/46/EC, the ECJ has already stated that

The term "personal data" is based on a broad understanding. So he is

Term not limited to sensitive or private information, but includes potentially

all kinds of information of both objective and subjective nature in the form of

Opinions or assessments, provided that they are information

"acts about" the person in question" (cf. the judgment of the ECJ of 20 December 2017, Case Nowak, C-434/16).

Furthermore, in the judgment of 19 October 2016, C-582/14, in margin no. 40 et seq., the ECJ stated that that

"from the wording of Art. 2 Letter a of Directive 95/46 [now: Art. 4 Z 1 GDPR] shows that not only a directly identifiable, but also an indirect identifiable person is considered to be identifiable.

The use of the term "indirect" by the Union legislature indicates that it is not necessary for the classification of information as personal data, that the information in itself identifies the individual concerned allows.

In addition, the 26th recital of Directive 95/46 [now: recital 26 GDPR], that all means are considered in determining whether a person is identifiable should be reasonably provided by either the data controller or could be used by a third party to identify the person concerned.

Since this recital refers to the means that could reasonably be obtained from either used by the data controller or by a "third party".

could, its wording is an indication that it is necessary for the classification of a date as "Personal data" within the meaning of Article 2(a) of Directive 95/46 [now: Art. 4 Z 1 DSGVO] it is not necessary for everyone to identify the person concerned information required by a single person is in the hands of a single person."

These considerations can be transferred to the current legal situation according to the GDPR since the definition of "personal data" according to Art. 2 lit Directive 95/46/EG was taken over in Art. 4 Z1 DSGVO.

Information "about" a specific person is available, among other things, if data relates to the situation of a person (cf. the opinion of the Art. 29 Working Party on Data Protection

4/2007 on the term "personal data", WP 136, 01248/07/DE, p. 10).

Based on this, it should be noted that the published content is

personal data iSd. Art. 4 Z 1 GDPR. It is – based on the

o.a. case law of the ECJ - it cannot be ruled out that third parties with reasonable effort

can create a personal reference, especially since the data through the publication

become known to an unlimited circle of addressees.

Apart from that, personal data is already processed because partially

the name of the treating/prescribing doctor can be seen and thus his data

be disclosed.

Further go from the published photos/screenshots

information about the

state of health of natural persons, which is why it can also be assumed that

that it is "health data" iSd. Art. 4 Z 15 GDPR (cf. again that

Judgment of November 6, 2003, according to which the term "data on health" within the meaning of Art. 8

Para. 1 of Directive 95/46/EC - now Art. 9 Para. 1 GDPR - is to be interpreted broadly, so that

it relates to all information that affects a person's health in all aspects -

physical as well as psychological – concern).

After all, it is clear that the person responsible for personal data, including

Health data, processed by extracting medical documents

published on a website. This even if the name of the person concerned

is not (always) evident.

#### 4. Legal Basis for Processing Special Categories of Personal Data

##### 4.1. For the processing of health data:

In principle, according to Art. 9 Para. 1 DSGVO, the processing of health data is considered

Processing of special categories of personal data ("sensitive data"). The

Processing of this data is prohibited unless the processing is based on a reason specified in paragraph 2



exhaustively enumerated encroachment facts can be supported.

To consider

is therefore whether the data processing under examination is based on one of the exceptions can be supported.

The person responsible states in summary that data is only available in the type and scope would be published, such as for tracking events in the service of

Patient safety is required for authorized persons. Patient safety is for

every therapist/doctor is the main focus of his actions. To protect this

higher-ranking interests of public health care and the administration of justice

sometimes also necessary to criticize and process managers across departments

to inform about grievances. A wide variety of platforms are available for this today

Dispositions such as "CIRS-Medical" and much more to ensure the necessary up-to-date transparency and

To promote communication culture in the medical field ("Just Culture"). Likewise be this

also possible via so-called "social media", of course with protection of the privacy of the affected patients.

The DPA does not deny that patient safety or patient welfare

represents the most essential focus for physicians.

At the same time, it can be legitimate to point out shortcomings in patient care.

However, as the person responsible explains himself, the privacy of those affected is important to protect patients.

By publishing photos/screenshots on Facebook, which – as already mentioned

– contain personal health data, but is kept in that same privacy

intervened, which the person responsible claims to want to protect. The submission of

Responsible is thus already in itself contradictory.

The person responsible overlooks

in this context also that one

Weighing of interests in accordance with Article 6 (1) (f) GDPR when processing

health data is not an appropriate legal basis. Other suitable

Legal bases iSd. Art. 9 para. 2 GDPR is not visible to the data protection authority

and were carried out by the person responsible within the scope of his accountability (cf. Art. 5 para. 2

DSGVO) also not put forward. The submitted data protection documentation

(General information, data processing directory, Art. 32 GDPR measures,

processor) and the rest of the opinion of the person responsible are limited

to general statements on the data processing of the person responsible

his work as a doctor.

It is still to be checked whether the publications are subject to the right to freedom of expression

Art. 11 EU-GRC are covered.

The right to freedom of expression conflicts with the right to protection

of personal data according to Art. 8 EU-GRC (cf. the decision of

18 December 2019, GZ DSB-D123.768/0004-DSB/2019 with further references).

In the present case, the Data Protection Authority considers itself competent to treat because

the exception according to § 9 paragraph 1 DSG does not apply (cf. iHa on Facebook postings

again the notification of December 18, 2019 loc.cit.).

As far as health data is concerned, the Supreme Court attaches particular importance to this

and regards them as belonging to the "highly personal sphere of life", which one

Publication regularly excludes (RS0124514) because this is an exposure

equivalent (cf. the decision of December 16, 2008, GZ 11 Os 144/07x mwN).

This is because "sensitive information comes before a non-limitable and controllable

be spread to the public. In such cases, the media indiscretion is already effective

as such compromising and not particularly in need of further adverse impact

be detected.

In the area beyond that, when examining the Eligibility for exposure in the manner of a mobile system also accompanying circumstances and to take into account the impact of a release, so a lower degree of affected privacy by a particularly detrimental form of representation can be weighed up. Whether this is a case of disregard for private life is determined thus on the one hand according to the privacy of the facts concerned and on the other hand according to the Intensity of the intervention in terms of form and content (cf. again the decision of December 16, 2008).

In the present case, therefore, the interest of the person responsible is in the disclosure of grievances the interest of the patients affected that their data in this context will not be published, opposite.

Due to the high need for protection of health data collected by the Jurisprudence is recognized, it can not be assumed that the interests of the person responsible predominate in the present case, so that Art. 11 EU-GRC is not considered Legal basis for the publications in question can be used.

#### 4.2. For the processing of other data:

As stated, in addition to health data, personal data is also collected iSd Art. 4 Z 1 GDPR, such as the names of those treating you or a medication prescribing physicians.

This is personal data, but not health data according to Art. 4 Z 15 GDPR.

The question of whether this data was lawfully published is therefore based on Art. 6 Paragraph 1 GDPR.

As already stated, the person responsible justifies the publications with the fact that it him to point out grievances in relation to the well-being of the patient or the patient safety go.

The only legal basis for the publications is therefore Article 6 (1) (f) GDPR

- legitimate interests of the person responsible - into consideration.

According to the case law of the ECJ on Art. 7 lit. f of Directive 95/46/EC (now Art. 6

Paragraph 1 lit. f GDPR), processing is permitted under three cumulative conditions:

1. Perception of a legitimate

interest through the

for processing

person responsible or the third party or third parties to whom the data is transmitted,

2. Necessity of processing the personal data to achieve the

legitimate interest and 3. no predominance of the fundamental rights and freedoms of

Data protection data subject about the perceived legitimate interest (cf

most recently the judgment of December 11, 2019, C-708/18).

In the present case, the admissibility of the processing fails at the longest on the third

Prerequisite: It is not apparent to what extent the rights of the

Publication should weigh little for the persons concerned than the right of the

responsible for the processing. In particular, it is not clear to what extent the

Naming specific persons should be useful for the goal pursued by the person responsible,

especially since these people are not accused of any concrete allegations and they are not accused of anything else either

Playing a role in public life (on the role in public life, cf

Decision of December 18, 2019 a.a.O. with further reference to the case law of the OGH).

For this reason, the admissibility of publication based on Art. 11 also fails

EU GRC.

5. Result

The data protection authority therefore comes to the conclusion that the publication of the

content under review without a suitable legal basis – and therefore illegal

is. Since at the time of the decision there were still photos/screenshots of

Find health data on the public Facebook page of the person responsible

also the mandate decision of March 30, 2020, for GZ D213.1042 (2020-0.203.677), im

Result not met.

In this respect, the mandate decision had to be confirmed in accordance with the verdict.

Regarding point 2:

According to Section 13 (2) VwGVG, the suspensive effect of a

submitted and admissible complaint according to Art. 130 Para. 1 Z 1 B-VG excluded

if, after weighing up the public interests and interests of others

Parties, the premature enforcement of the contested decision or the exercise of the

entitlement granted by the disputed decision due to imminent danger

is required.

The present disclosure on the website of the person responsible for the purpose of

“Pointing up grievances” takes place without

supporting legal basis and applies

severely interferes with the fundamental right of those affected to secrecy.

The requirements of § 13 para. 2 VwGVG are thus undoubtedly given and were the

suspensive effect of any complaint by those responsible - as in

Saying point 2 pronounced - to rule out.

It had to be decided accordingly.