OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00EFTWZ *

Ref. UOOU-02528 / 20-14

DECISION

The President of the Office for Personal Data Protection as the appellate body competent under the provisions § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided in accordance with the provisions of § 152 paragraph 6 letter b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Appeal of the party to the proceedings, XXXXXX, against the decision of the Office for Personal Data Protection ref. UOOU-02528 / 20-8 of 7 September 2020, is rejected and the contested decision is upheld.

Justification

Definition of things

[1] Administrative proceedings on suspicion of committing an offense pursuant to Section 61 (1) of the Act No. 110/2019 Coll., on the processing of personal data, violation of the ban on disclosure of personal data stipulated by another legal regulation, was initiated by the delivery of the order no. UOOU-02528 / 20-3 on 14 July 2020 to the accused, XXXXXX (hereinafter "the accused").

[2] The basis for issuing the order was the file material collected by the Czech Police Republic, which was delivered to the Office for Personal Data Protection (hereinafter referred to as the “Office”) on June 11, 2020. It follows from this file that the Police of the Czech Republic came to the conclusion that the accused violated the ban on providing information about criminal proceedings and persons on it participants pursuant to Section 8b (1) of the Criminal Procedure Code.

[3] Criminal proceedings concerning the physical assault of the accused for which they were provided

the information in question was terminated by the police authority by submitting a proposal to the

filing a charge pursuant to Section 166 (3) of the Criminal Procedure Code.

[4] According to the case-file, he was charged

as a witness (injured)

in the criminal case in question on the provision of information on criminal proceedings and persons on it

of the participating Police of the Czech Republic on 3 December 2018.

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[5] On 21 October 2019 and 5 November 2019, the director of the University Hospital in Pilsen received,

letters containing information that a criminal is being held with the doctor of this hospital XXXXXX

personal injury proceedings and should be taken out of service as it is the rapist who

he unleashes his frustrations with violence. Both letters were signed on behalf of XXXXXX. As was the case

The police of the Czech Republic found out that no person with this name lives in the village of Smědčice.

[6] Already after receiving the first letter, he submitted XXXXXX on 31 October 2019 through his

lawyer, XXXXXX, lawyer, initiative to check for possible leakage of information

from the criminal file. On 6 February 2020, following a second letter, he supplemented his complaint, and

at the same time, he asked the police authority to request the originals of both letters from the University Hospital

Pilsen. These letters XXXXXX subsequently left, together with a pre-litigation order for damages

received from the accused, assessed by an expert in the field of criminology with a specialization in language

expertise, XXXXXX, which expressed the view that, despite the small scale, anonymous letters were delivered

directors of the University Hospital Pilsen are connected with other disputed letters, as well as with comparative letters

texts using identical and similar characters of different nature, which allow them from the point of view of authorship

to be attached to these texts. (This expert report was delivered to the Police of the Czech Republic on 6 May 2020.)

[7] Pursuant to Section 89 (2) of the Criminal Procedure Code, the fact that he did not seek or request evidence

body active in criminal proceedings is not a reason to reject it. This provision so fully

applies to expert opinions or expert opinions.

[8] In accordance with § 110a of the Criminal Procedure Code, if the expert opinion submitted by the party has

all the requisites required by law and includes an expert's clause stating that he is aware

consequences of a deliberately false expert opinion, this procedure shall be followed

evidence as if it were an expert opinion requested by a law enforcement

management. The law enforcement authority shall provide the expert requested by either party

for an expert opinion, inspect the file or otherwise allow him to acquaint himself with the information

necessary for the preparation of the expert opinion.

[9] The assessment of all evidence by law enforcement authorities is based on the principle of

free evaluation of evidence enshrined in § 6 paragraph 2 of the Criminal Procedure Code. According to this provision

"Law enforcement agencies evaluate evidence according to their internal convictions

on careful consideration of all the circumstances of the case, individually and in their entirety '.

[10] Following the inquiry, the police authority found that the actions of an unknown person

(writer of letters with the above texts) is not capable of jeopardizing the seriousness of XXXXXX with his

co-workers or his person or reputation at work, neither in the management of the hospital nor in the past

This conduct caused XXXXXX to cause other serious harm and no harm to him by doing so

the statement did not arise. Police authority of the Economic Crime Department of the Police of the Czech Republic Rokycany

he therefore concluded that the conduct of the criminal could not have been fulfilled by this conduct

the act of defamation pursuant to Section 184 of the Criminal Code, or any other criminal offense, but it could have occurred

to fulfill the factual nature of the offense against civil cohabitation according to § 7 par. 1 let. c) I will

3, Act No. 251/2016 Coll., On certain offenses, ie intentional civil violation

cohabitation by committing consent to another. Therefore, on 11 March 2020, the case was in line with

§ 159a paragraph 1 letter a) of the Criminal Procedure Code, submitted by the Police of the Czech Republic to the authority

competent for the hearing

offense, in this case the Office of the Pilsen City District 1. On 7 May 2020, the Police of the Czech Republic

sent a copy of the documented expert report prepared by XXXXXX to this municipal office

for further use in the case.

[11] Given that the Police of the Czech Republic came to the conclusion that it could have been committed by the same act also another offense against another socially protected interest (object misdemeanor), in particular an offense under Section 61, Paragraph 1 of Act No. 110/2019 Coll., on Work personal data, consisting in a breach of the prohibition on the disclosure of personal data laid down by another by law dated 4 June 2020, referred the matter (file) to the Office, namely delivery to the registry office on June 11, 2020. In this letter, the Police of the Czech Republic stated that An examination by a forensic expert found that the writer made anonymous letters addressed to The University Hospital Pilsen was accused.

[12] Subsequently, as mentioned above, it was issued by the Office on 14 July 2020 order no. UOOU-02528 / 20-3, by which the accused was found guilty of violating the offense under § 61 paragraph 1 of Act No. 110/2019 Coll., In the form of indirect intent, as it violated the prohibition disclosure of personal data provided in § 8b paragraph 1 of the Criminal Procedure Code, according to which persons information covered by the ban has been provided by law enforcement authorities publication pursuant to § 8a para. 1 sentence two of the Criminal Procedure Code, for the purposes of criminal proceedings or to exercise the rights or fulfill the obligations stipulated by a special legal regulation, they may not provided to anyone unless they are necessary for those purposes, which they shall do be instructed. For this conduct she was accused according to § 35 letter b) of the Act No. 250/2016 Coll., the Act on Liability for Misdemeanors and Proceedings on Them and in accordance with § 61 para. 2 letter a) of Act No. 110/2019 Coll. imposed a fine of CZK 1,000.

[13] The defendant lodged an objection against this order on 14 July 2020, in which only he said briefly that he had not sent any letters and did not know what they were. He also stated that he XXXXXX on 7 June 2018 unjustifiably attacked and caused him serious injuries to the right eye and severe concussion with lasting consequences. Following the opposition, the administrative proceedings in the present case in accordance with the provisions of Section 150, Paragraph 3 of the Administrative Procedure Code.

[14] On 7 September 2020, the administrative body of the first instance issued decision no. UOOU-02528 / 20-8, in which he remained in his legal opinion expressed in the order.

[15] The accused filed an objection against this decision on 21 September 2020 via a data plan

clipboard proper decomposition.

Decomposition content

[16] At the beginning of his appeal, the accused claims that he did not send any anonymous letters. Further

He stated that XXXXXX had caused him a lifetime injury by his attack in 2018.

The accused also commented on the expert report, the conclusion of which he described as amateur,

biased, manipulated and unprofessional, in order to intimidate him. There are four attachments to the decomposition

allegedly anonymous letters addressed to the accused from 5 November 2019 to 5 December

2019, by which he wants to prove that he is intimidated. (Note: These letters were part of the report

assigned to group "E" and in its conclusions evaluated as unrealistic threat letters, which

the author is probably their addressee accused.) The accused proposes removal as evidence

fingerprints from letters, because he is 100% convinced that they will not be there because he did not write them.

[17] In conclusion, the accused states that since 2016 he has been registered at the Labor Office as

unemployed, but in this connection he only provided proof of keeping the register of candidates

on employment from 1 December 2016, also from 1 December 2016. He also provided a certificate of temporary

the inability of the jobseeker to perform his duties as a result of illness or

accident, with an illegible date of issue and permitted attendance from 2

January 2019

and the dates set for doctor examinations, the last of which was scheduled for 1 October 2020. In conclusion

of his dissolution, the accused asks for "exemption", from which it can be concluded that he is seeking annulment

decision of the administrative body of first instance.

Assessment by a second instance body

[18] The Appellate Body examined the contested decision in its entirety, including the

which preceded its publication, and came to the following conclusions.

[19] As for the documents for issuing the decision, it can be stated that according to § 50 par. 4 of the Administrative

Procedure Code

the administrative authority evaluates these documents in accordance with the principle of free evaluation of evidence. Within

In accordance with the provisions of Section 51, Paragraph 1 of the Administrative Procedure Code, all evidence may be used

for the taking of evidence

means which are appropriate to establish the state of affairs and which are not obtained or executed

contrary to law. These are mainly documents, searches, testimony and expert opinions

opinion. One of the documents submitted to the administrative first-degree police officer

authority within the handover of the case § 159a par. 1 let. a) of the Criminal Procedure Code was an expert opinion

developed by a forensic expert in the field of criminology, specialization language expertise - determination

authorship of texts, handwriting expertise. The conclusions of this expert opinion are then administered by the administrative

body

the first instance in the context of other documents and findings

suitable for ascertaining the state of affairs of which there are no reasonable doubts within the meaning of Section 3 of the

Administrative Procedure Code

order. The administrative authority of first instance, as stated on page 6 of the contested decision,

in that regard, it considered, in particular, the fact that the accused, who had in the present case

criminal proceedings as a witness (injured party), he had a single along with the accused XXXXXX (and his

lawyer) the right to inspect the file and was thus aware of the information

contained in the sent letters of criminal proceedings. The administrative body then deduced from the above

first instance its conclusion, ie the proven authorship of anonymous letters to the accused.

[20] On the issue of the use of documents from other public authorities in administrative proceedings

stated by the Supreme Administrative Court in paragraph 51 of its judgment no. 1 As 168/2014 - 27: “If they can be

according to § 50 par. 1 of the Administrative Procedure Code documents for issuing decisions documents from other bodies

public authorities (undoubtedly also from the Police of the Czech Republic or the district court ruling

in criminal matters), it can undoubtedly be concluded that the evidence obtained in accordance with

law in criminal proceedings are the means by which evidence can be taken in the aftermath

This provision applies with regard to the provisions of Section 89 (2) of the Criminal Procedure Code
even if the report was not commissioned directly by law enforcement authorities,
if the report was prepared by a qualified expert in the field in question (assessed
matters).
[21] The possibility for the administrative authority to take decisions on the basis of evidence obtained in criminal proceedings
proceedings, the Supreme Administrative Court also commented in the judgment of 27 August 2014, No. 1 As 97/2014
- 39, in which he stated that “he agrees with the conclusion of the regional court, according to which nothing generally prevents
that the administrative authority to which the case in which the criminal proceedings were originally
in the subsequent misdemeanor proceedings, he ruled on the basis of the evidence provided in the criminal proceedings.
It can be assumed that, as a rule, the facts will be established by law enforcement authorities

can be considered sufficient and it would be uneconomical and superfluous to take evidence
in administrative proceedings again. Of course, it cannot be ruled out that in specific cases it will be
necessary to supplement the evidence, but in the present case the administrative authorities have not found that to be the
case
was. In general, in such a case, he is not obliged to take evidence again (or evidence)
supplement) or the regional court in the subsequent review of the decision of the administrative body, because
administrative justice (although it applies the principle of full jurisdiction and the court may
circumstances of the evidence) is based mainly on the principle of cassation. The regional court has matured
to conclude that the administrative authorities relied on a sufficiently established fact and situation
duly substantiated the conclusion. "
[22] Possibility to use evidence obtained in criminal proceedings as well as in administrative proceedings
authority was also admitted by the Supreme Administrative Court in its judgments of 30 January 2008, file no
Afs 24/2007 - 119, and of July 22, 2009, No. 1 Afs 19/2009 - 57. As stated by the Supreme
the administrative court in its decision no. 1 As 168/2014 - 27, „.. despite the above judgments
relating to tax proceedings and a different factual situation, they conclude that it is generally possible

in administrative proceedings, use evidence obtained in accordance with the law as a basis for the decision

in criminal proceedings. "

[23] In addition to the above, the Appellate Body finds that during the administrative procedure

the accused within the exercise of his right to propose evidence pursuant to Section 36 (1) of the Administrative Procedure Code

nor did it request proof by an expert opinion commissioned by the administrative authority, although

was duly instructed in this possibility in a note to the Office entitled acquaintance with the documents

decision no. UOOU-02528 / 20-3 of 6 August 2020.

[24] The accused also did not exercise his right under Section 80 (2) of Act No. 250/2016 Coll.,

on liability for and conduct of misdemeanors, of which he was also the administrative body of the first

degree properly instructed.

[25] On the basis of all the above, the Appellate Body therefore considers that it is factual

the situation has been established by the first instance legal authority without reasonable doubt, in accordance

with the provision of § 3 of the Administrative Procedure Code.

[26] As regards the amount of the fine imposed, the Appellate Body then finds that it was imposed at

the very lower limit of the statutory rate and its amount were duly substantiated by the administrative authority of the first instance.

The appellate body therefore considered the sanction imposed on the accused to be proportionate.

[27] The accused merely points out his difficult financial situation in the appeal,

however, he did not raise an argument of the liquidating nature of the sanction. If he still had a problem with the accused

imposed the sanction, despite its relatively low level, to pay in a lump sum (in particular

given the current situation and the declaration of a pandemic emergency

COVID-19), has the opportunity on the basis of § 156 of Act No. 280/2009 Coll., Tax Code, to request administrative

authority of first instance for permission to pay the fine in installments (application for permission to spread

payment of fines imposed in installments).

[28] The Appellate Body therefore concludes, after an overall examination, that it was not in any respect

the reason for the illegality of the decision has been found, in particular the fine imposed for

reasonable and did not find any errors in the procedure of the administrative body of the first instance.

Therefore, on the basis of all the above, the Appellate Body ruled as indicated

in the operative part of this decision.

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Instruction: Pursuant to the provisions of Section 91, Paragraph 1 of Act No. 500/2004 Coll.,

Administrative Procedure Code cannot be revoked.

Prague, December 23, 2020

official stamp imprint

Mgr. Jiří Kaucký

chairman

(electronically signed)

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