OFFICE FOR PERSONAL DATA PROTECTION

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DECISION

* UOOUX00E85I4 *

Ref. UOOU-05284 / 19-36

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, XXXXX, with its registered office at XXXXX, IČO: XXXXXX, against the decision of the Office for

personal data protection ref. UOOU-05284 / 19-20 of 2 June 2020, is rejected and challenged

the decision is confirmed.

Justification

Definition of things

[1] The basis for proceedings in the matter of suspicion of committing an offense pursuant to Section 62 (1)

letter b) of Act No. 110/2019 Coll., on the processing of personal data, in connection with the unauthorized

by publishing the criminal order on the Facebook profile "XXXXX" available on the Internet

address XXXXX, the file material was collected on the basis of complaints received by the Office for

protection of personal data (hereinafter referred to as the "Office"), concerning possible breaches of

processing of personal data by the accused, XXXXX, with its registered office at XXXXX, IČO: XXXXX (hereinafter referred to

as

"Accused").

[2] It was clear from the file that the accused on 17 January 2020 at 21:53.

posted a post on his Facebook profile with a copy of the partially anonymized

criminal order issued against XXXXX, which continued to contain her personal

data in the range of name, surname, place of birth, city of permanent residence, related information

to her offense of false accusation and the name of the Facebook profile "XXXXX", on which

a photograph with her likeness was placed, as well as information related to her

misdemeanor.

[3] On the basis of the above, the Office first alerted the accused to the breach of the Regulation

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

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

Directive 95/46 / EC (hereinafter "the General Regulation") and called on it to remedy the illegal situation. On this

The defendant responded to the summons by a letter dated 10 March 2020, in which he informed the Office that

the incriminated post at that address has been permanently deleted, correcting it

and this claim was verified by the Office. However, a follow-up investigation was carried out on

On 15 April 2020, on the basis of the complaint received, it was found that the contribution in question was at

the defendant's Facebook profile remains publicly available.

[4] Subsequently, therefore, the administrative body of the first instance issued an order ref. UOOU-05284 / 19-15 ze

on 27 April 2020, by which the conduct of the accused was qualified as a misdemeanor pursuant to Section 62

paragraph 1 (a) b / Act No. 110/2019 Coll. and at the same time a fine of

CZK 10,000. However, the order was subsequently revoked due to the defendant's opposition.

[5] The result of the ongoing infringement proceedings was the issuance of decision no. UOOU-

05284 / 19-20 of 2 June 2020 (rozhodnutí the decision ') reaffirming the accused

guilty of committing an offense under § 62 para. b / Act No. 110/2019 Coll. and she was

imposed a fine of CZK 10,000 because it violated one of the basic principles for processing

personal data pursuant to Articles 5 to 7 or 9 of the General Regulation, which as personal data controller

XXXXX committed that from 17 January 2020 and at least until 15 April 2020

posted a post with a copy in part on his publicly available Facebook profile

anonymised criminal order of 8 January 2020 issued against XXXXX, whereby

this order contained her personal data in the range of name, surname, place of birth, city

permanent residence and the name of the Facebook profile "XXXXX", on which the photo with her is placed

as well as information relating to the perpetration of the false accusation she committed.

[6] However, the accused first filed a blanket appeal against the decision, which was subsequently filed against

reasoned by the administrative authority of the first instance.

Decomposition content

[7] In the appeal, the accused mainly recalled that he had not published any photograph of the person concerned

persons, ie XXXXX.

[8] Furthermore, as the accused stated, the publication in question could not have infringed the law

to protect the personal data of the person concerned, as the name and surname of the natural person

the data are not, not even in connection with her ID card number. At the same time accused

suspended that the existence of "XXXXX" had not been established through which

Facebook profile, the offense was committed, stating that her name and surname is not

personal data. In this connection, the accused referred to the verdict of the Supreme Administrative

court no. 1 As 98 / 2008-148 of 29 July 2009 and the judgment of the Regional Court in Brno

Ref. 29 A 48 / 2013-68 of 20 February 2015.

[9] The accused also drew attention to the principle of public trial, to which he is to be associated

the possibility of publishing the data of all participants in the proceedings. Therefore, anonymization should be absurd

court decision, which was previously reported in detail by the media, including

the names of all participants and their photographs, being accused on some examples

demonstrated the bizarreness of such a procedure and referred to professional literature, practice

European Court of Human Rights and the Court of Justice of the EU, as well as domestic case law, in particular

Judgment of the Supreme Administrative Court Ref. 2 As 21 / 2011-166 of 25 March 2011.

[10] XXXXX was then to enter the public sphere of her own accord, by publishing crooked

accusations of another person on Facebook, and therefore the publication of the information in question in public

of interest.

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[11] The accused also expressed doubts as to whether the case was decided by an impartial and impartial official person and argues that this was not the case. It performed the initial acts in the present proceedings a person other than XXXXX, who entered the proceedings only by issuing a decision. About the newly established however, the accused did not know the authorized official until the moment of delivery of the decision, and therefore he could not object to her bias. He then sees that XXXXX has been negative for a long time defines against the publication of court decisions and the possibility of their public tracing on Internet, for which XXXXX in the website has long been publicly criticized XXXXX. These circumstances are intended to indicate possible unauthorized manipulation of the legitimate designation officials.

[12] The defendant therefore proposed that the contested decision be annulled.

Applicable law

[13] Article 6 (1) of the General Regulation reads: "Processing is lawful only if at least one of the following conditions is met and only to the extent appropriate:

(a) the data subject has given his or her consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for performance of a contract to which the data subject is a party; or to carry out pre-contractual measures at the request of that data subject;

(c) processing is necessary for compliance with a legal obligation applicable to the controller;

(d) processing is necessary in order to protect the vital interests of the data subject or otherwise Individuals;

(e) processing is necessary for the performance of a task carried out in the public interest; or the exercise of official authority vested in the administrator;

f) processing is necessary for the purposes of the legitimate interests of the relevant controller or third party, except where those interests take precedence over interests or fundamental rights and freedoms

data subject requiring the protection of personal data, in particular if he is a data subject

child."

[14] Provisions of § 62 par. 1 let. b) of Act No. 110/2019 Coll. reads: "Administrator or processor

under Title II, it commits an offense by:. (b) infringes any of the basic principles for

processing of personal data pursuant to Articles 5 to 7 or 9 of the Regulation of the European Parliament and of the Council

(EU)

2016/679 “.

[15] Article 4 (1) of the General Regulation reads: "Personal data (means) all

information on an identified or identifiable natural person…;

a person is a natural person who can be directly or indirectly identified, in particular by reference to a specific one

identifier, such as name, identification number, location data, network identifier, or

one or more special elements of physical, physiological, genetic, mental, economic, cultural

or the social identity of that natural person. "

Assessment by a second instance body

[16] The appellate body reviewed the contested decision on the basis of the appeal

in its entirety, including the process that preceded its release and first dealt with it

arguments of the accused.

[17] First of all, he found that according to the statement of the decision, the accused published m.j. and name

Facebook profile "XXXXX", which contains a photo of the image XXXXX. It's not

therefore, it is stated here that the photograph in question would be published directly by the accused, both

this he mistakenly objected.

[18] Furthermore, the Appellate Body found that personal data, as can be deduced from the definition given above

in Article 4 (1) of the General Regulation, it is a kind of data item entity which, taken as a whole, is certain

inform the identified (designated) or identifiable (identifiable) physical

about myself. Subject data items in the range of name, surname, place of birth, city of permanent

residence and an indication of the commission of the offense, provided that it can be traced on the basis of published information

and the portrait of the person concerned clearly allow the identification of XXXXX, at least within its social circle. Thus, personal data were obviously disclosed by the accused data, which thus infringed the rights of the data subject. The subject of this proceeding was then not processing of personal data XXXXX, and therefore it is pointless to consider whether and to what extent could be identified on the basis of all available data. Necessary, of course recall that the process of identifying a natural person must be carried out individually and from this reason, the reference to the judgment of the Supreme Administrative Court ref. 1 As 98 / 2008-148 of 29 July 2009 also on the judgment of the Regional Court in Brno File no. 29 A 48 / 2013-68 of 20 February 2015 seems irrelevant.

[19] The latter judgment of the Regional Court in Brno also deals with the issue disclosure of the personal data of the relevant plaintiff by the Constitutional Court in accordance with with the legal order, which moreover fully corresponds to the specific nature of the subject proceedings, which is a completely different matter from a arbitrarily treated case disclosure by the accused. Due to the specific nature of the procedure is also necessary also refer to the practice of the European Court of Human Rights and the Court of Justice as irrelevant Court of Justice of the European Union. In this context, the appellate body also suspends a certain one inconsistency in the arguments of the accused, who first denied that he would in the treated case personal data in order to justify the need to disclose them.

[20] The appellate body, which also applies to the defendants, is recalled in the technical literature He also noted that public control of the judiciary, which can be seen as a subset public interest, is ensured in the conditions of the Czech legal system through the principle public hearings before the court, including public information on all ordered hearings. The control of court proceedings in a specific case (in the case of identified participants) is thus ex ante it is manifested by public participation in court proceedings and is fulfilled by the public pronouncement of the judgment.

This can be seen as the focus of the democratic legitimacy of the judiciary. At the same time, it is indisputable that sufficient information from court proceedings to fulfill this goal is provided by the state itself, resp. courts and the state administration of the courts, by entirely sufficient and proportionate means. Performance control the judiciary in terms of access to information on the course and outcome of court proceedings to be a self - serving tool for satisfying subjective curiosity, but to act as democratic corrective of the judge in his activities in a specific proceeding (but not to put pressure on the judge) judge in a particular case). It is to be a prevention against arbitrariness, decision-making by the cabinet judiciary and before overall "encapsulation" of the judiciary.

[21] However, by deciding on a specific case, this specific function is in principle exhausted, because the case of a particular participant is in principle closed. After a specific trial The identification of the participants in the proceedings is thus no longer a necessary condition for the fulfillment of this function.

Ex post control of the administration of justice on the basis of published (generally anonymised)

judgments focuses on more general aspects: uniformity and consistency of decision-making, monitoring development of case law over time, detection of judicial excesses, etc., however, regardless of identity parties to the proceedings. From these functions of public control of the judiciary, which manifest themselves in various stages unequally, in any case it is not possible to deduce the right of further publication, resp. boundless processing of personal data relating to court proceedings, resp. contained in the documents about them, as at the same time the right to privacy guaranteed by the Charter must be respected fundamental rights and freedoms. It is therefore necessary to distinguish between public control of the judiciary and the disclosure of personal data through the processing in question.

[22] The fact that personal data is assessed on an individual basis does not change this contained in judgments may be subject to further processing and thus to publication. It's acting in particular the processing referred to in Article 6 (1) (a). (c) and (e) and Article 9 (2) (a) (g) general a regulation which is necessary for the performance of the tasks imposed by law or for the performance of the task

carried out in the public interest or for the exercise of official authority. However, such processing must be
be established by another supplementary legal title, which is also § 17 of Act No. 110/2019 Coll.
allowing the processing of personal data for journalistic purposes, if it can be concluded that
in this case, there is a legitimate interest in personal data becoming part of the public debate.
This is especially true when it comes to public officials who appear in court proceedings
precisely in connection with its public activity. At the same time, however, it must be added that when applying § 17
Act No. 110/2019 Coll. it is also necessary to take into account whether the processing also includes personal data
pursuant to Article 10 of the General Regulation, ie personal data relating to criminal convictions and
criminal offenses. How can it be inferred, as for the processing of such personal data general
Regulation is based on the principle of prohibition, resp. this processing is permissible only in exceptional cases
cases, more needs to be done in assessing the legitimate interest mentioned above
interest of the data subject. In addition, processing under Article 6 (1) (a) would be possible. F)
possibly (d) and Article 9 (2) (a) f) or. (c) of the General Regulation, if necessary for protection
certain relevant interests and, of course, processing with the consent of the data subject.
The above interpretation is not questioned in any way by the accused of the mentioned "bizarreness" in judicial practice:
In addition, it can be recalled that personal data is only information concerning
therefore, from the point of view of the general regulation, there is really no need in the
of the Supreme Court judgment to anonymize the name of Adolf Hitler (the appellate body is
I also know from the case law of the same court the case of anonymization of the dog's name), but similar excesses
they say nothing about the desired level of protection of real personal data.
[23] The accused then justified the disclosure of the personal data in question by stating that the defendant concerned
the person was to enter the public sphere of his own free will, by publishing false accusations of others
person on Facebook, and therefore the publication of the information in question is in the public interest. What
concerns the public interest, however, in relation to an accused person whom the legal system has not entrusted to any
only the application of Section 17 of Act No. 110/2019 Coll., as it was
outlined above. However, as the appellate body found, the person XXXXX concerned is not public

active, she entered the "public space" by randomly publishing the false accusation she was behind

sanctioned and there was no need to substantiate any need for its specific conduct

followed by a public debate. At the same time, it is a mere publication of the communication via the Internet

(social networks) does not yet mean entering, in that sense, public debate, as it is necessary

assess the true impact of such a publication. This is the thing if we look away from

somewhat different legislation at the time differs from the case treated by the judgment

Of the Supreme Administrative Court ref. 2 As 21 / 2011-166 of 25 March 2011, when the meeting took place

on the publication of information concerning a common civil dispute. Disclosure of this data

moreover, it was a reaction to the questioning of the complainant's activities at the time, which is a circumstance which

the conduct of the accused cannot be reported. The accused also obviously did not have any means

the consent of the person concerned and disclosure were also not necessary for protection

no relevant interests. It is therefore clear that the processing of personal data in question

it lacked any legal title and was therefore illegal.

[24] With regard to the objection of bias raised, the Appellate Body found that provision XXXXX

as an authorized official occurred on the basis of the record ref. UOOU-05284 / 19-19, which was

duly placed in the file. The accused would therefore find out about this fact if he was asserted

his right to inspect the file, for which he was, moreover, invited by a letter no. UOOU-05284 / 19-

18 of 11 May 2020. This is therefore a belated objection which cannot be raised

take into account. Nevertheless, the Appellate Body states from a factual point of view that the grounds for the provision

XXXXX as an authorized official was a long-term incapacity for work originally

designated officials. The claim that XXXXX (meant personally)

"In the long run, adversely opposes the publication of judicial decisions," as it clearly appears

vulgar discussion on the XXXXX website does not participate in any way, which is why the content of this website

he does not say anything objectively about his relationship to the matter. In addition, the accused mistakenly believes

that in the so-called "case XXXXX" the issue of publication of court decisions was the subject of a dispute.

The objection of bias is therefore constructed so purposefully that it would not stand even in the case

timely administration.

[25] Furthermore, after an overall examination, the Appellate Body did not find any administrative action

first instance, no errors rendering the decision illegal. It seems to him in particular

as a reasonable amount of the fine imposed at the very lower limit of the rate. In this context in particular

states that the administrative authority of the first instance correctly took that into account when determining the sanction

increasing the seriousness of the conduct, in particular the failure to properly remedy the defective

after being notified by the Office, with the accused in his communication of 10 March

2020 purposefully stated the opposite.

[26] For all the above reasons, the Appellate Body therefore ruled as set out in

opinion 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, August 19, 2020

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)