OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00D2H3I *

Ref. UOOU-09728 / 18-23

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29 and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts and according to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., The Administrative Procedure Code decided on 4 February 2019 according to

provisions of § 152 par. 6 let. a) of Act No. 500/2004 Coll., the Administrative Procedure Code as follows:

Decision of the Office for Personal Data Protection ref. UOOU-09728 / 18-16 of 4 December 2018 on the basis of the dissolution of the party to the proceedings, XXXXX, born XXXXX, byte XXXXX, cancels and thing returns to the administrative authority of first instance for a new hearing.

Justification

Administrative proceedings on the imposition of measures to eliminate the identified deficiencies pursuant to Section 40 of the Act

No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts kept against party, XXXXX, born XXXXX, apartment XXXXX (hereinafter referred to as the "party to the proceedings"), was initiated by issuing an order to the Office for Personal Data Protection ref. UOOU-09728 / 18-2 of 26 October 2018. The basis for its issuance were the complaints of the data subjects received by the Office for protection of personal data (hereinafter referred to as the "Office") in the period from June to September 2018, the subject of which

was the publication of the complainants' personal data on the website https: XXXXXX, in in the form of an abbreviated version of the judgment of the Supreme Administrative Court of the Czech Republic (hereinafter

"SAC")

and in the overview of court proceedings. Additional documents were provided by the Office on 20 and 25 September and 5 October 2018 on the basis of Section 3 of Act No. 255/2012 Coll., on Control (Control Rules), of the above website of the party to the proceedings, resp. NSS website, http://www.nssoud.cz, and Ministry of Justice of the Czech Republic (hereinafter "MSpr"), https://infojednani.justice.cz.

Following that procedure, it was found that the party's website was https: // XXXXX

In the section "Overview of court proceedings", information on court proceedings is published, which was ordered in all high, regional, municipal and district courts, to an extent almost 2 million records. The content of the information published for each meeting is identification of the competent court, designation of the meeting room, date and time of the hearing, meeting number, title, name and the surname of the solver, the type of proceedings (proceedings, promulgation of the judgment, etc.) and the title, name and surname parties to the proceedings (in the case of natural persons). Each record then includes a link to the report proceedings on the MSpr website (http://infosoud.justice.cz).

draws judicial negotiations from web information about

It was also found that in the section "Archive of the official board of the NSS" on the website of the party to the proceedings https: // XXXXX NSS judgments are published, both abbreviated and anonymized version of the entire judgment, including a statement of reasons, of around 4,300 records relating to judgments of the NSS. The content of the information given for each judgment is the date of publication judgment, reference number, area concerned and title, first and last name of the parties management (in the case of natural persons). At the same time, an abridged version of the judgment of the Supreme Court

and the

in some cases, an anonymised version of the whole judgment, including the reasons. When,

if one of the parties to the proceedings was a natural person, then there are abbreviated versions in the statement

the judgment of the Supreme Court stated the personal data of this participant in the range of name, surname and address

residence and further it is stated here how the SAC decided in the given case (ie information on the outcome of the

proceedings before

NSS). If the SAC has already published an anonymised version of the entire judgment in the given case, it is possible with

using the information contained in the record and the identification data in the abridged version of the judgment in

also assign all information about the subject and course of the proceedings to the given natural person.

From the links placed to the individual records published on the website

https.//XXXXX in the overview of court proceedings and further from publicly available information (especially

to https: // XXXXX, which the party also operates) then it turned out that the party above

described

MSpr

(http://infojednani.justice.cz). The party to the proceedings regularly collects from this source

information on ordered court proceedings, then post this information on its website

https: // XXXXX, where it continues to process (publish) them, virtually unlimited

time. On the MSpr website https://infojednani.justice.cz

are published

information on court proceedings, which was ordered for the next 30 days, ie so far

did not take place. The information includes the date and time of the meeting, room, title, name and surname

researcher, type of proceedings (proceedings, promulgation of judgment, etc.), title, name and surname of the participants

proceedings (in the case of natural persons) and whether it is a closed session; and

whether the meeting was canceled. This information is no longer available after the hearing in question

listed MSpr website available. On the website of MSpr

https://infosoud.justice.cz information on the course of court proceedings is then published,

ie an overview of individual events that occurred during the proceedings. To a certain file mark are
information on the status of the proceedings is published on this website (final
pending case) and the course of the proceedings, ie the type of event that occurred in the proceedings (eg
initiation of proceedings, order of proceedings, issuance of a decision). This information is available here even after
however, the content of the proceedings in question is legally terminated, but they do not contain any of them
stage of the proceedings - personal data of the participants in the court proceedings.
With regard to the judgments of the SAC, it was found that the party collects the published judgments
on the official board of the NSS, which is accessible remotely via the website of this
court http://www.nssoud.cz. Judgments collected in this way, abbreviated and anonymised,
the party places the procedure on its website https: // XXXXX, where it continues to publish it (ie
processes the personal data contained therein), in fact for an indefinite period. NSS on its own
the official board, and therefore also on the website http://www.nssoud.cz, declares in accordance
with Section 49, Paragraph 12 of Act No. 150/2002 Coll., the Code of Administrative Procedure, shortened judgments by
posting
written statement without justification for a period of 14 days, if they are at the time of delivery of the judgment
only judicial persons are present. After this period, an abridged version of the judgment is ex officio
the board is removed and is subsequently replaced by an anonymised version of the reasoned judgment.
The identification data of the participants in the proceedings are thus on the official board of the NSS (and on the website of
the

http://www.nssoud.cz) accessible only for a period of 14 days, and only in the form of an abbreviated version
of the judgment and not at the same time as the anonymised version of the judgment, which describes the procedure in detail
management.
On the basis of these facts, the administrative body of the first instance issued a decision no. UOOU-
09728 / 18-16 of 4 December 2018 (hereinafter referred to as the “Decision”), by which it imposed on the
implement the following measures within a specified period:

1. stop publishing personal data XXXXX (in the form of an abbreviated version of the NSS judgment) a

XXXXX (in the form of a summary of court proceedings) at https: // XXXXX,

2. terminate the disclosure of personal data of participants in court proceedings that have already taken place on

website https: // XXXXX,

3. to end the publication of personal data of participants in court proceedings before the SAC, after

14 days after the publication of the judgment in question on the official notice board of that court, at

website https: // XXXXX.

However, the party to the proceedings objected to the proper appeal. In it he marked the attacked

decision was illegal and proposed to stay the proceedings. In this regard, he stated above all that in the proceedings

decided by biased persons, which in his opinion should be XXXXX as well as XXXXX,

the party to the proceedings personally challenged her in the appeal. It should be the same

illegally denied the status of party XXXXX and no proof was provided by e-mail

correspondence XXXXX, from which it should have been apparent that he objected to the prohibition of the processing in

question

dozens of people protested personal data. Furthermore, the party to the proceedings stated that the Office to him

he did not approach neutrally, but tried to portray him as a delinquent who disregards the protection of individuals

data and ignores the legitimate interests of their subjects, as evidenced by e-mail communication XXXXX

and prior consultation with the Office. The real reason for this proceeding is then revenge

Office for previous criticism of its activities by the party to the proceedings. In addition, the processing in question

personal data was registered by the Office, and the party to the proceedings rejected the view that it would do so

registered processing could not be considered as approval in the sense of approval

all aspects of the activity concerned.

The party subsequently referred to recitals 50 and 158 of the Regulation of the European Parliament and of the Council

(EU) 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 (EU

2016/679) and stated that the processing of personal data in question should be classified as

archiving in the public interest, which they can, as follows from § 56 et seq. Act No. 499/2004 Coll.,
on archiving and file service, also performed by private entities. He also recalled Article 96 (2)
Of the Constitution, according to which proceedings before a court are in principle public and oral and the judgment is
pronounced
always in public. Therefore, any secrecy of information about the activities of the court should be, in his opinion
party, by attacking the very essence of a democratic state governed by the rule of law. Is therefore
there is no doubt that all court decisions are publicly available and the public is informed
on ordered public court hearings, including identification of participants, both in the building
court or on the internet portal or on monitors in court buildings. Processing
personal data by the party to the proceedings is then fully in line with this principle and contributes
to achieve a higher degree of public control over the judiciary, as postulated in Article 6 (1)
letter f) EU Regulation 2016/679 (resp. § 5 paragraph 2 letter e) of Act No. 101/2000 Coll.), while
the related proportionality test is primarily performed by the creators of the personal data (especially the courts).
Possible anonymization must be assessed individually, but it is rather an exceptional case
the interest of the data subject outweighs the public interest in ongoing publicity. He can come to her

occur, for example, after the removal of information on a criminal conviction or after five years of legal force
offense decision. However, no such situation was found in any of the complainants
and, in that connection, the party also relied on the judgment of the European Court of Human Rights
in M.L. and W.W. v. Germany, 28 June 2018.
The appellate body reviewed the decision in its entirety, including the previous process
its issue, in particular dealt with the arguments of the party to the proceedings.
Regarding the individual arguments of the party to the proceedings, the appellate body primarily states that the issue
XXXXX's bias and the issue of granting the status of party to the XXXXX proceedings have been resolved
in separate proceedings, where bias XXXXX was not found and XXXXX position
was not granted. E-mail communication should also be considered irrelevant

XXXXX, as the lawfulness of the processing of personal data cannot be inferred from the interest of a particular heading persons for relevant information. Likewise, the XXXXX fingerprint and the Office are irrelevant for this procedure as such.

Regarding the matter of registration according to § 16 et seq. Act No. 101/2000 Coll., it is necessary first to admit that the processing of personal data in question at the time of fulfillment of the notification obligation could be classified as not contrary to the conditions of Act No. 101/2000 Coll. This conclusion primarily allowed by the provisions of § 5 para. d) of Act No. 101/2000 Coll., according to which it was possible to process personal data even without the consent of the data subject if it was “legitimately published personal data in accordance with a special legal regulation ". Application of this legal title, however, was conditioned by performing a balance test of personal data protection required by the second sentence of the provision of § 5 par. 2 let. d) of the Act No. 101/2000 Coll. ("However, this is without prejudice to the right to protection of private and personal life data subject. ”) and further by the provision of § 10 of Act No. 101/2000 Coll., according to which he is obliged the controller (ie the party to the proceedings in this case) to ensure that the data subject does not suffer rights, in particular the right to respect for human dignity and also to safeguard against unauthorized interference with the data subject's private and personal life. However such a test would probably not satisfy the personal data processing in question.

However, the decision was based on an assessment of the conformity of the personal processing in question data with EU Regulation 2016/679, which already has a legal title similar to the provisions of § 5 para. d) Act No. 101/2000 Coll. does not anchor. In addition, EU Regulation 2016/679 does not even know registration in within the meaning of § 16 et seq. Act No. 101/2000 Coll., which a priori excludes individual repeal already registrations made.

In the appeal proceedings, the party 's arguments concerning with the legal title to the processing of personal data in question. It first follows that is to deal with archiving in the public interest by a private entity. Law No. 499/2004 Coll. Although private archives do allow, the party to the proceedings does so

in relation to the processing of personal data in question, he did not document, in particular did not document the grant necessary accreditations (Section 56, Paragraph 2 of Act No. 499/2004 Coll.). Furthermore, such an archive would have to comply
as well as a number of other conditions imposed by the latter law, including the introduction
certain rules for making archives (information) accessible (see Section 34 et seq. of Act No. 499/2004 Coll.),
which the processing of personal data in question clearly does not comply with. From this point of view, then
references to recitals 50 and 158 of EU Regulation 2016/679 are a priori irrelevant.

Subsequently, the party to the proceedings infers from the fact of the public the proceedings before the public court
accessibility of all court decisions. However, this interpretation must be rejected as contradictory already
grammatical interpretation of Article 96 of the Constitution itself and is also inadmissibly extensive, as it would
meant the denial of other constitutionally guaranteed rights, in particular the right to privacy
according to Article 10 of the Charter of Fundamental Rights and Freedoms. In this context, it is necessary to distinguish between public
control of the judiciary argued by the party and disclosure of personal data
through the processing in question. The public control of the judiciary is obviously
the processing of personal data by a party to the proceedings is not necessary. In other words, it is
necessary to respect the principle of publicity in court, including public information
of all ordered negotiations with the designation of the parties, however, no right can be deduced from this
further disclosure of personal data relating to court proceedings, resp. contained
in documents about them.
The public proceedings and the right to a public announcement of a decision under Article 6 § 1 of the Convention on Protection
human rights and fundamental freedoms ensure transparency in the administration of justice, however
The European Court of Human Rights (ECtHR) allows exceptions to the oral decision
and did not define specific rules on public access to these decisions if they have not been taken

public announcement. It is, of course, possible to argue that the Czech constitutional order
Republic places higher demands on the transparency of the exercise of judicial power, but neither in the case law
There is no support in the legal literature for concluding that this is the form of publicity that
mediated by a party to the proceedings is a consequence of a constitutional requirement of the public
court proceedings.
In any case, special legislation must be respected, including EU regulations
2016/679, including the legal title used by the party to the proceedings, enshrined in the provisions of Article 6
paragraph 1 (a) f) EU Regulation 2016/679. In this context, however, it is primarily necessary to prove a certain
legitimate interest. This, as stated in recital 47 of EU Regulation 2016/679, must be taken into account
through a reasonable expectation of the data subject based on his relationship with the controller
and could be given, for example, in a situation where there is a relevant and appropriate relationship between them.
Something
however, this is completely absent in the treated case, as the level of reasonable expectation is
defined by the public of the court itself, as mentioned above. On the contrary, legitimate
the data subject's expectation is that after the relevant negotiations and information have taken place
removed from the original source, the rights of the data subjects concerned shall in principle prevail.
The processing of personal data in question cannot therefore be established by a legal title enshrined
Article 6 (1) (a) f) EU Regulation 2016/679. At the same time, however, it must be admitted that he is sure
the proportionality test was really primarily performed by MSpr, resp. competent court, however, this
it only concerns the processing of personal data by these institutions and cannot be extended to the participant
management.
Art. Article 6 (1) (a) (f) EU Regulation 2016/679 stipulates that processing is lawful only if it is
at least one of the following conditions is met and only to the extent appropriate: the processing is
necessary for the legitimate interests of the administrator concerned or a third party, except where
these interests take precedence over the interests or fundamental rights and freedoms of the data subject
requiring the protection of personal data, in particular if the data subject is a child.

In the case of Article 6 (1) (a) f) of EU Regulation 2016/679, it can be added that the interpretation of the term “justified interest ”is addressed by Opinion WP29 of 9 April 2014 on the concept of legitimate interest according to Article 7 of Directive 95/46 / EC, WP 217, pp. 34-36 (Opinion 06/2014 on the notion of legitimate

the data controller under Article interests of https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/index_-en.htm).

A balance test should be carried out, the four criteria of which are set out in that opinion: 7 of Directive 95/46 / EC

1. Assessment of the weight of the administrator's legitimate interest.

In particular, the exercise of fundamental human rights or freedoms, public interest or the interests of the wider community, other legitimate interests, resp. recognition of legitimacy these interests. The answer to this question is indicated above. It should be added that the consequences are only the partial disclosure was addressed in a Supreme Court ruling of 29 June 2015 sp.zn. 23 Cdo 7/2013 (approved by the resolution of the Constitutional Court of 2 May 2017 sp.zn. I.ÚS 2925/15). The Supreme Court in the legal sentence of the judgment interpreting § 155 par. 4 of the Civil Code, transposing European directives (in particular Directive 2005/29 / EC on unfair commercial practices) practices, Directive 2009/22 / EC on injunctions for the protection of interests consumers and Directive 2004/48 / EC on the enforcement of intellectual property rights), following: 'Publication of the operative part of the judgment alone is insufficient. Conclusion on the need to publish the judgment in whole or in part corresponds to grammatical and teleological reasoning interpretation of the provisions of § 155 par. 4 of the Code of Civil Procedure He mentions the right to publish a judgment (no operative part of the judgment). The purpose of publishing the judgment is to inform in the interest of the participant as well as in the wider interest

the public (eg consumers or competitors) about the outcome of the trial; goes at the same time

o a method of complementary reinforcement of a defendant's or defended claim. No publication

however, the informative value of publishing the judgment would be significant

reduced - the addressees of a statement consisting only in the operative part of the judgment would not know for what reasons

the opinion has been issued, which could lead to undesirable conjectures and reduced legal certainty ".

These conclusions are reasonably applicable to the present case. There is no reason to hide

that the access of the parties to the proceedings and the public to information about the activities of the courts is not ideal is

it is reasonable to ask whether these shortcomings in the party's activities really help

eliminate without creating problems for others.

2. Assessment of the consequences of processing for data subjects.

Within this criterion, it is necessary to take into account all the impacts for data subjects, including those that are

mediated, as well as the nature of personal data (their importance for data subjects), the way

data processing, reasonable expectations of data subjects and the status of data controller and subject

data.

The importance of personal data from court proceedings is diverse. In some cases, this may be the case

disclosure associated with very adverse effects on the parties.

These persons (eg some victims of crime) may therefore be discouraged from applying

their rights in the courts.

In connection with EU Regulation 2016/679, the treatment of certain personal data has been tightened

data. An example is the decision of the President of the Constitutional Court No. 17/18 of 26 April

2018 on the publication of decisions of the Constitutional Court. The new decision responds to EU regulations

2016/679 (cf. Article 10 of the Regulation) and the scope of automatic anonymisation is extended so that now

they will anonymize all those involved in the criminal proceedings and all minors, whatever they may be

mentioned in any situation and context.

3. Balancing the legitimate interest with the consequences that the processing may have for the operators

data.

It does not provide an undifferentiated way of making data available in electronic databases

many options in practice to balance legitimate interest with implications for data subjects.

The case law of the ECtHR and the Court of Justice of the EU distinguish between original publishers who carry out their own

Freedom of speech, from Internet search engines, which originally infringed on the privacy of individuals

enhance and allow you to gather available information about a person and create their profile. Therefore, it can

Finding a fair balance for both will lead to different results (cf. Google Spain

and Google, Case C-131/12, Judgment of the Court of Justice of the EU of 13 May 2014 or Judgment

ESPL in the case of M.L. and W.W. v. Germany of 28 June 2018). It is the activity of the party to the proceedings

is comparable to search engine operators rather than original publishers

messages.

4. Acceptance of additional guarantees by the data controller for the protection of the rights and freedoms of data subjects.

It is not clear what guarantees the data controller (ie the party to the proceedings) for the protection of rights and freedoms

data subjects.

With regard to the judgments of the SAC, it is also a matter of fulfilling the obligations imposed in the provisions of Section 49

paragraph 12 of Act No. 150/2002 Coll. (ie on the processing of personal data established by the provisions of Article 6

paragraph 1 (a) c) EU Regulation 2016/679), which, however, do not apply to the party to the proceedings.

In the case of Article 6 (1) (a), c) EU Regulation 2016/679 must be a legal obligation,

not a mere power, and the provision in question therefore clearly does not fall on the party concerned.

In this context, the Office, as the appellate body, found that Article 6 of EU Regulation 2016/679

does not contain any legal title attesting to the processing of personal data in question by the participant

proceedings by Mr XXXXX, the decision to which the appeal was lodged authorizes for some time

the period of publication of personal data of participants in court proceedings and publication of personal data

participants in court proceedings before the NSS. Likewise, the decision very inconsistently reflects the law

for erasure (right to be forgotten) under Article 17 of EU Regulation 2016/679, as it has been applied

only against five data subjects. The appellate body is therefore forced to state that the administrative body

did not properly consider the overall framework of EU Regulation 2016/679.

Judgment of the ECtHR in M.L. and W.W. v. Germany of

On June 28, 2018, he really refused to grant the right to privacy to criminals

however, it concerned a report placed in the archives of Internet news sites

dealing with the murder of a famous person, when, in addition, the complainants (perpetrators) themselves

they publicized it and thus brought it back into the public eye. So it's a pretty different form

processing of personal data, in addition to the very specific circumstances that have been taken into account

and, for those reasons, that judgment cannot be applied to the personal processing in question

data to apply. Although this ECtHR judgment contains some of the conclusions applicable at present

case, it is already clear at first sight that based on the case of two convicted murderers

to life imprisonment (albeit later on parole) and to draw general conclusions from it

for all litigants is not exactly concise.

Finally, it would be appropriate to comment on the arguments of the party with legitimate expectations.

The party raised a rather interesting question whether

is the duty of state authorities

interpret the national legal order in accordance with a legal act of the European Union which

it is not effective, but it is no longer valid. There is a relatively large case law on this

directives, but not regulations. This is because the regulations are directly applicable

a regulation in which (with certain exceptions, cf., for example, Case 272/83 Commission v Italy, SbSD 1985,

p. 1074) is not being transposed. For this reason, it cannot be convincingly argued that the administrative body

he did not err in notifying the party in his notification of the consequences of the new one

ordinance.

On the basis of all the above facts, the Office, as the appellate body, found a part

decision as incorrect and contrary to the law, and therefore decided as it is

stated in the statement. However, he states that he fully accepted the procedure of the first administration

degree, which reasonably considered the very specific circumstances of the transitional period

with the termination of the applicability of some parts of Act No. 101/2000 Coll. entry into force

EU Regulation 2016/679 and proceeded only to impose corrective measures without taking any action

to sanction proceedings and sanctions.

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, February 4, 2019

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman