

OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00ERWKQ *

Ref. UOOU-05284 / 19-47

DECISION

Chairman of the Office for Personal Data Protection as an appellate body competent pursuant to § 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided pursuant to the provisions of § 152 para. and),

§ 152 paragraph 5 and § 90 paragraph 1 letter b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-05284 / 19-20 of 2 June 2020

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

Justification

AND.

Definition of things

(1) The basis for proceedings in the matter of suspicion of committing an offense pursuant to § 62 para. b)

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 "XXXXXX" available on the Internet

address XXXXXX, 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, XXXXXX, with its registered office at XXXXXX (hereinafter referred to as the "accused").

(2) It was clear from the file that the accused placed on 17 January 2020 at 21:53

a post on your Facebook profile with a copy of a partially anonymized criminal

an order issued against XXXXXX, which continued to contain her personal data

to the extent name, surname, place of birth, city of permanent residence, information relating to her offense of false accusation and the name of the Facebook profile "XXXXXX", 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 notified the accused of a 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.

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(4) Subsequently, therefore, the administrative body of the first instance issued an order ref. UOOU-05284 / 19-15 of April 27, 2020, by which the conduct of the accused was qualified as a misdemeanor pursuant to Section 62 (1) letter b) of Act No. 110/2019 Coll. and at the same time a fine of CZK 10,000 was imposed on the accused. However, the order was subsequently revoked due to the defendant's opposition.

(5) The result of the ongoing infringement proceedings was the issuance of a decision no. UOOU-05284 / 19-20 of 2 June 2020 reaffirming the accused of committing an offense offense according to § 62 par. 1 let. b) of Act No. 110/2019 Coll. and was fined CZK 10,000 because he violated some of the basic principles for the processing of personal data according to Articles 5 to 7 or 9 of the General Regulation, which he committed as a personal data controller XXXXXX by placing it on publicly from 17 January 2020 and at least until 15 April 2020 accessible Facebook profile post with a copy of a partially anonymized criminal an order of 8 January 2020 issued against XXXXXX, which contained her

personal data in the range of name, surname, place of birth, city of permanent residence and name Facebook profile "XXXXXX", which contains a photo with her portrait and also information relating to her offense of false accusation.

(6) Decision no. UOOU-05284 / 19-20 of 2 June 2020 was then a decision

President of the Office Ref. UOOU-05284 / 19-36 of 19 August 2020 confirmed. However

the accused subsequently turned to the Municipal Court in Prague with a lawsuit seeking annulment

the latter decision of the President of the Office, in which the Municipal Court in Prague ruled

Ref. 14 A 1 / 2021-40 of 20 April 2021 complied.

(7) In the grounds of the judgment in question, the Municipal Court in Prague stated in particular that

Article 6 (1) (a) f) a general regulation, the application of which the Office in the contested

excludes the decision, regulates the lawfulness of the processing of personal data if "it is necessary for

for the purposes of the legitimate interests of the administrator concerned or of a third party, except where before

interests take precedence over the interests or fundamental rights and freedoms of the data subject in need of protection

personal data, in particular if the data subject is a child ". The cited provision therefore allows

to give priority to the rights of others over the data subject's right to the protection of personal data,

however, again on the basis of the specific ratio of these conflicting rights. In this case

it was therefore necessary to perform a so-called balance test, ie a de facto proportionality test of two in a collision

existing rights, namely the right of the data subject to the protection of personal data on the one hand and

the public to be informed about criminal proceedings through the accused in the role of the so-called

"Social watchdog" on the other hand. Since the Office's assessment of the above

conditions for the lawfulness of the processing of personal data in administrative decisions

did not deal with and limited itself to stern statements that the processing of personal data for example

pursuant to Article 6 (1) (a) f) of the general regulation would be possible, resp. that the accused title

for the processing of personal data under this provision does not prove, however, without

He explained convincingly and, above all, in a verifiable manner why it could not be considered

in this case, let alone carry out a proportionality test in the above sense

the decision is a defect of unreviewability for lack of reasons.

II.

Assessment by the appellate body

(8) The Office is the opinion of the Municipal Court in Prague expressed in the judgment no. 14 A 1 / 2021-40 of 20 April 2021 bound (see § 78 para. 5 of Act No. 150/2002 Coll., Administrative Procedure Code).

(9) Furthermore, it should be recalled that the appellate body with regard to the provisions of § 152 para. 6 letter a) and § 90 par. 1 let. c) of Act No. 500/2004 Coll., as the accused would be in danger of harm

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Due to the loss of the opportunity to appeal, he does not have legitimacy to take the case

decided that the decision of the administrative body of the first instance ref. UOOU-05284 / 19-20 of

On 2 June 2020, it was amended in accordance with the requirements of the judgment of the Municipal Court in Prague ref. 14 A 1 / 2021-40 of April 20, 2021.

(10) For the above reasons, the Appellate Body therefore ruled as set out in the operative part of this notice decision.

(11) In the subsequent proceedings, the administrative authority of the first instance should therefore comply with the requirements

Judgment of the Municipal Court in Prague Ref. 14 A 1 / 2021-40 of 20 April 2021 to carry out the so-called balance test as required by Article 6 (1) (a) (f) a general regulation comparing the two

conflicting rights, ie the right to inform the public about the outcome of criminal proceedings

on the one hand, and the right to personal data on the other, and then to issue new ones

decision. In the opinion of the Appellate Body, it can then be used for its implementation

the argumentation of the Municipal Court in Prague contained in the judgment no. 5 and 138/2014 of 2 October

2017. More specifically, the first instance administrative body should first determine what they are

the legitimate interests of the accused or third parties in the disclosure of the personal data in question,

resp. whether they correspond to the role of the so-called "social watchdog" and whether these interests are possible

through the publication in question, or whether the objective pursued would not be

means can be achieved that are less intrusive on the data subject's rights

for the protection of personal data. However, the basis for these considerations must also be to determine to what extent

degree or whether the accused can be granted the role of a so-called "social watchdog", by others

in other words, whether and to what extent and for what reason it acts in the public interest and thus contributes

public debate or whether the accused is acting in a private interest. Subsequently, it will be necessary

consider to what extent the interference with the right to protection of personal data in question is proportionate, ie

if the seriousness of the infringement of a fundamental right in a given specific situation is outweighed by the significance

the objective pursued is not whether the victim brought about in the form of a restriction of a fundamental right is not received

disproportionate to the benefits that the restriction has brought. In this context, it will also be necessary

in accordance with recital 47 of the General Regulation, the reasonable expectations of the person concerned must also be

taken into account

the data subject on the basis of his relationship with the accused (controller), it will also be necessary to consider

in so far as the publication in question corresponds to the provisions of Article 10 of the General Regulation

governing the processing of personal data relating to criminal and criminal convictions

acts. Relevant case law will also need to be taken into account, in particular

judgments of the European Court of Human Rights in the case of Magyar Jeti Zrt v. Hungary of

December 4, 2018 No. 11257/16, in the cases of M.L. and W.W. v. Germany of 28 June 2018

Nos 60798/10 and 65599/10 and in Høiness v Norway of 19 March 2019 Nos 43624/14.

Lessons learned:

Pursuant to the provisions of Section 91 (1) of the Act, this decision shall be challenged

No. 500/2004 Coll., Administrative Procedure Code, cannot be revoked.

Prague, May 28, 2021

Mgr. Jiří Kaucký

chairman

(electronically signed)