

GZ: 2020-0.303.727 from September 1, 2020 (case number: DSB-D124.1342)□

[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.□

The decision has been pseudonymised with particular care because of the□

However, reporting of related events cannot□

be excluded that the complainant or the respondent of□

Readers with the appropriate knowledge and skill in Internet research□

can be identified. The relevant secrecy interest of both parties□

does not outweigh the public interest in the legal through § 23 para. 2□

DSG required publication of the decision.].□

NOTICE□

S P R U C H□

The Data Protection Authority decides on Maga's data protection complaint. Ulrike A\*\*\*□

(Appellant) of August 26, 2019 against the association N\*\*\* (Respondent), seat:□

O\*\*\*straße \*\*32, 1\*\*\* Vienna, ZVR: 4\*27\*541\*, due to violation of the right to erasure as□

follows:□

- The complaint is rejected.□

Legal basis: Article 85 of Regulation (EU) 2016/679 (General Data Protection Regulation, im□

hereinafter: GDPR), OJ No. L 119 of 04/05/2016 p. 1; Section 9 (1) of the Data Protection Act□

(DSG), Federal Law Gazette I No. 165/1999 as amended [Editor's note: In the original due to a□

obvious editorial error: Section 9 (2) DSG]; § 1 Para. 1 Z 1 and Z 6 des□

Media Act (MedienG), Federal Law Gazette No. 314/1981 as amended.□

A. Submissions of the parties and course of the proceedings□

## REASON ☐

1. With a submission dated August 26, 2019, the complainant alleged a violation in ☐

Right to Erasure. In summary, it was argued that in a contribution by ☐

Respondent at [https://verein-n\\*\\*\\*.at/presse/news/201\\*/reportsneu\\*3\\*1\\*8\\*.php](https://verein-n***.at/presse/news/201*/reportsneu*3*1*8*.php) ☐

be named. In addition to many misrepresentations, she will also ☐

referred to as "spies". With an application dated June 28, 2019, she requested the deletion of her data ☐

requested that the Respondent had the deletion by letter dated July 25, 2019 ☐

declined. ☐

2. The Respondent brought this up in a statement dated October 10, 2019 ☐

summarized, that the objectively relevant contribution is a journalistic one ☐

Realize the purpose of a media company and therefore the media privilege according to Art. 85 ☐

GDPR in conjunction with § 9 DSG. ☐

3. At the request of the data protection authority, the respondent has further ☐

Statement of March 18, 2020 its structure and the internal procedure at ☐

Publication of new articles in the news area at [https://verein-n\\*\\*\\*.at/presse/news/](https://verein-n***.at/presse/news/) ☐

disclosed. ☐

4. The complainant then replied - according to the parties belonging to the results of the ☐

Preliminary proceedings - with statements of November 6, 2019 and May 12, 2020 ☐

summarized, that the misrepresentations of the Respondent clearly show ☐

would that it was his intention to have her as a witness in an ongoing trial ☐

denigrate. Furthermore, the remarks on ☐

editorial work of ☐

Respondent inflated and she could not remember an editorial meeting. ☐

B. Subject of the proceedings ☐

Based on the arguments of the parties involved, it follows that the subject of the complaint is ☐

The question is whether the complainant was infringed in her right by the respondent ☐

deletion was violated.□

It must be checked in advance whether the data protection authority is responsible for processing the data in question□  
complaint is responsible.□

### C. Findings of Facts□

1. The respondent is an association which, among other things, works for animal and□  
environmental protection.□

2. The Respondent also operates a news section on its website at□  
[https://verein-n\\*\\*\\*.at/presse/news/](https://verein-n***.at/presse/news/) (accessed on August 31, 2020). In this news section□

Posts are regularly published on topics related to animal welfare□  
stand. This is intended to raise public awareness of, among other things, animal protection and□  
environmental protection are strengthened□

3. Two people share the content for the support of the mentioned news area□

Management/Publishing. Two people work editorially in the news area in a managerial capacity□  
people as editor-in-chief, and there are also five people who work as editors.□

An editorial meeting takes place once a week to discuss which ones□

Contributions will be published in the next seven days and who is responsible for what. the□

Creation of a content is requested by the editor-in-chief. The content will eventually□

passed on to Content Management/Publishing, which creates the content for the webpage□

graphically design and correct the text. All contributions must be submitted by the editor-in-chief□

be approved. Around 68 hours a week are used to operate the news area□

invested.□

Evidence assessment: The findings made are based on the opinion of the□

Respondent of March 18, 2020. The complainant has to this□

Opinion of the Respondent put forward that her the statements□

would appear "inflated", but this opinion was expressly disputed□

not. From the point of view of the data protection authority, the stated statement is in any case conclusive□

and there is no reason to doubt the opinion.□

4.□

the□

publicly□

retrievable□

contribution□

under□

<https://verein->□

[n\\*\\*\\*.at/presse/news/201\\*/reportsneu\\*3\\*1\\*8\\*.php](https://verein-n***.at/presse/news/201*/reportsneu*3*1*8*.php) from May 11, 2017□

is like□

follows□

(Formatting not reproduced 1:1, retrieved on August 31, 2020):□

[Editor's note: The one at this point in the notice is reduced but completely and in the□

The contribution reproduced in the original web design cannot be pseudonymised and was therefore□

removed. In it the allegation is made that the complainant, by her name□

and her function as area spokeswoman for the D\*\*\* party, was during a□

political campaign against certain forms of hunting also as a "snitch" for one□

Opponent of the N\*\*\* association (and the chairman of the association) from circles of the hunters□

been active.].□

Evidence assessment: The findings made are based on the opinion of the□

Respondent of October 10, 2019 and on an official search by the□

Webpage at [https://verein-n\\*\\*\\*.at/](https://verein-n***.at/) (accessed on August 31, 2020) and are insofar□

indisputable.□

5. The complainant was in the past on the board of the D\*\*\* party (D\*\*\*-P) and□

active as \*\*\*\*speaker of the D\*\*\*-P. In this function she also appeared in public. she□

ran for the National Council in 201\* on a D\*\*\*-P list. Furthermore□

she worked from March 2015 to the end of January 2016 as an activist in the association N\*\*\*.□

Evidence assessment: The statements made are based on the opinion of the□

Appellant of November 6, 2019, which are undisputed in this respect.□

6. With the application dated June 28, 2019, the complainant requested the deletion of her data□

the above post of May 11, 2017. The Respondent has her with□

Letter dated July 25, 2019 notified not to comply with application. Then brought□

the complainant lodges a complaint with the data protection authority. The one above□

mentioned article from May 11, 2017 is at the time of completion of the present□

Complaints procedure still available online.□

Evidence assessment: The findings made are based on the input of the□

Complainant of August 26, 2019 and on an ex officio search of the link□

[https://verein-n\\*\\*\\*.at/presse/news/201\\*/berichteneu\\*3\\*1\\*8\\*.php](https://verein-n***.at/presse/news/201*/berichteneu*3*1*8*.php) (accessed on August 31□

2020).□

D. In legal terms it follows that:□

1. General information on "media privilege" and the competence of the data protection authority□

a) On Art. 85 GDPR□

According to Art. 85 Para□

Compliance with the requirements according to paragraph 2 and paragraph 3 leg. cit. – the right to protection□

personal data under this regulation with the right to□

free□

expression of opinion and□

Freedom of information, including processing□

to□

journalistic purposes and for scientific, artistic or literary purposes□

purposes, in accordance.□

b) For the Austrian implementation of Art. 85 GDPR□

In § 9 paragraph 1 DSG, the previous data protection law "media privilege" according to § 48

DSG 2000, Federal Law Gazette I No. 165/1999

idF BGBl. I No. 83/2013, with

extended

Scope transposed into the GDPR system. The national regulation in § 9

DSG ties in with Art. 85 GDPR, a basic provision including an opening clause

(cf. Suda/Veigl in Gantschacher/Jelinek/Schmidl/Spanberger, Data Protection Act<sup>1</sup> § 9 margin no. 1,

still with reference to § 9 DSG as amended by Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 1

Amendment Act 2018)).

According to the express legal text of § 9 Para. 1 DSG, two requirements must be met

must be met cumulatively in order to enter the privileged scope:

Firstly, processing of personal data by media owners,

Editors, media workers and employees of a media company or

media service within the meaning of the MedienG and has secondly to this processing

journalistic purposes of the media company or media service.

It is striking that Section 9 (1) DSG contains a restriction to a specific professional group

("classic media companies"), although Art. 85 Para. 2 GDPR such a

restriction is foreign and leg. cit. only to "processing for journalistic purposes"

connects.

The ECJ goes after stRsp in relation to the former Art. 9 of the Directive 95/46/EC - the

The counterpart provision of now Art. 85 GDPR - assuming that in Art. 9 of the directive

95/46/EC exemptions and exemptions not only for media companies,

but apply to everyone who works as a journalist (cf. the judgment of the ECJ of February 14

2019, C-345/17 [Buivids] para. 52 and the Rsp cited there).

A direct application of Art. 85 Para. 2 DSGVO with non-application of § 9

Para. 1 DSG is ruled out, however, since the first provision is not a material provision,

but only contains the mandate addressed to the Member States□

to enact legislation for certain processing situations (cf. Schiedermaier in□

Ehmann/Selmayr, General Data Protection Regulation Comment<sup>2</sup> [2018] Art. 85 margin nos. 1 and 9).□

An interpretation of Section 9 (1) DSG in the light of the above-mentioned case law of the ECJ□

but would -□

in reverse - to□

to lead,□

any data processing□

"journalistic purposes" to the verification control by the data protection authority□

revoke. After the stRsp of the EuGH exceptions and limitations have regarding□

to limit data protection to what is absolutely necessary (cf. the judgment of the ECJ□

of February 14, 2019 loc.cit., para. 64 and the Rsp cited there).□

The analogous application of Section 9 (1) DSG to the present facts is also different□

out; the restriction to a certain professional group standardized in § 9 para. 1 DSG was in□

the originally planned implementation of Art. 85 (2) GDPR domestically□

provided (cf. RV 1664 dB XXV. GP, 14.), which is why it is a deliberately restrictive□

approach of the Austrian legislator (cf. VwGH 10.10.2018, Ra 2018/08/0189□

Rs 4 mwN, according to which the analogy is generally permissible in public law, but that□

existence of a genuine legal loophole is assumed).□

c) intermediate result□

It can therefore be assumed that only if the two requirements of § 9□

Paragraph 1 DSG legal protection exclusively by way of the ordinary courts according to MedienG□

is possible and the data protection authority is not responsible (cf. the decision of the□

DSB of August 13, 2018, GZ: DSB-D123.077/0003-DSB/2018).□

In all other cases, the data protection authority is responsible for the treatment of the content□

However, within the scope of the consideration, the right to freedom of expression according to Art. 11 EU□

GRC or Art. 10 ECHR to be taken into account.□

2. In the matter□

a) Respondent as "media company"□

According to § 1 para. 1 no. 1, a "medium" means any means of disseminating communications□

or performances with intellectual content in word, writing, sound or image to a larger one□

group of people by way of mass production or mass distribution.□

According to § 1 para. 1 Z 6 MedienG, a "media company" is a company in which the□

content design of the medium is taken care of as well as its production and distribution (Z 1□

leg. cit.) or its broadcast or retrievability (Z 2 leg. cit.) either concerned or□

be prompted.□

According to § 1 Para. 1 Z 11 MedienG, a "media employee" is an employee who works in a□

Media company or media service in the content design of a medium or□

contributes to the media service as a journalist, provided that he is an employee of the□

Media company or media service or as a freelancer this journalistic□

activity constantly and not just as an economically insignificant sideline.□

According to the Supreme Court's stRsp, the term media company is fulfilled if the□

A company beyond the mere distribution of content – with a minimum□

in entrepreneurial structures - is operated, the purpose of which is the□

The content of the website is designed by an editorial team and a large number of employees□

or freelance media employees (cf. RIS-Justiz RS0129847).□

In the literature it is stated that in the field of electronic media, the□

Content provider (i.e. the operator of a platform on which information about the use□

placed on the web) is covered by the term "media company". Next will□

mutatis mutandis geared to the fact that "[...] the economic organizational unit to whose□

Corporate (main) purpose is the content design of the medium, namely□

(regularly) by an editorial team and a large number of employees or□



freer□

Media staff" decisive□

is (cf. Koukaul□

in Berka/Höhne/Noll, media law:□

Practice comment4 [2019] § 1 margin no. 25 with further references).□

In a similar case, in which the respondent there –□

the representative of the respondent, Dr. Karl R\*\*\* - operated a private blog and□

has published personal data of the complainant, the applicability of the□

Media privilege denied. This is because the operation of the private blog does not include it□

it was to be assumed that the standard demanded by the Supreme Court was that of a media company□

with regard to the structure is fulfilled (cf. the decision of the DSB of March 4, 2020, GZ: DSB-□

D124.1340/0003-DSB/2019, not in the RIS, but known to those involved).□

As stated, for the relevant news area at [n\\*\\*\\*.at/presse/news/ However, five people regularly work as editors, there is one□](https://verein-□</a></p></div><div data-bbox=)

Content/Management/Publishing Team as well as two people as editors-in-chief who□

contribution□

release.□

A total of 68 hours per week are provided by employees of the□

Respondent invested in the specified news area.□

In the sense of the cited stRsp of the OGH, the respondent not only spreads content in the□

connection with animal and environmental protection, but this also has a minimum□

Established structures in order to research this content accordingly in advance and□

to prepare. The persons working for the Respondent are also regularly and□

not only occasionally entrusted with the distribution of content in the news area.□

It can remain undecided whether the Respondent with the publication of content□

- including the complainant's personal data - intends to profit□

(cf. the judgment of the ECJ of December 16, 2008, C-73/07 [Satakunnan

Markkinapörssi and Satamedia] margin no. 59)

It can therefore be assumed that the Respondent in the present case uses the term

of the "media company" according to § 1 Abs. 1 Z 6 MedienG fulfilled.

b) Data processing for "journalistic purposes"

Processing of personal data for journalistic purposes is based on

understanding of the ECJ if the processing has the sole purpose of

To disseminate information, opinions or ideas to the public (cf. the judgment of

ECJ of 16 December 2008, C-73/07 [Satakunnan Markkinapörssi and Satamedia]

para. 62).

For the applicability of the privilege according to § 9 paragraph 1 DSG

is therefore the only one

Processing purpose decisive.

Applied to the present case, these statements mean the following:

The relevant contribution is a report in the

Connection to a court case between a hunter – which is also the subject

the reporting of the respondent was - and the chairman of the

Respondent, Dr. Karl R\*\*.

Mentioning the complainant by name as a witness in this trial is

public interest of relevance, since this is a (former) politician

acts, which (at least in the past) on the board of the D\*\*\*-P and as a \*\*\*\*speaker

of this party and also worked for the Respondent for a certain period of time (cf. on

public interest in private individuals entering the "political stage", RIS Justice

RS0115541).

It can therefore be assumed that the publication of the personal data of

complainant in the relevant article a journalistic purpose

pursued.□

### 3. Result□

As a result, it should be noted that the Respondent is□

i)□

in any case□

as part of the operation of the news area at <https://verein->□

n\*\*\*.at/presse/news/ is a media company according to § 1 Abs. 1 Z 6 MedienG and□

that□

ii) the objectively relevant publication of the personal data of□

complainant□

in the□

news area□

under□

<https://verein->□

n\*\*\*.at/presse/news/201\*/reportsneu\*3\*1\*8\*.php for journalistic purposes.□

The requirements of Section 9 (1) DSG are therefore met.□

As stated above, the data protection authority is within the scope of Section 9 (1) DSG□

responsible for dealing with complaints.□

The appeal was therefore dismissed in accordance with the verdict.□