

OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00EOYRG *

Ref. UOOU-08596 / 17-74

DECISION

The Chairman 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 a), § 152 par. 5 and § 90 par. 1 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Decision of the Office for Personal Data Protection ref. UOOU-08596 / 17-56 of 20 June

2018 is annulled and the case is returned to the administrative body of the first instance for a new hearing.

Justification

I. Definition of the matter

[1] Proceedings on suspicion of committing a misdemeanor against the accused, XXXXXX, born on XXXXXX, apartment XXXXXX (hereinafter referred to as the "accused"), was launched on the initiative of the Statutory City of Olomouc, which was the Office for Personal Data Protection (hereinafter referred to as the "Office") delivered on August 31, 2017.

[2] The complaint received and its annexes showed that the accused had published on 23 August 2017 via the social network Facebook on its profile post that it contained personal data XXXXXX, employee XXXXXX, in the range of name, surname, maiden name and the date and place of birth, which he obtained from the criminal proceedings file, and hereinafter referred to as the curvature a witness in criminal proceedings, where XXXXXX actually acted as a witness.

[3] The accused was the verdict of the District Court in Olomouc ref. 5 T 273 / 2015-194 of

On July 14, 2016, he was sentenced to a suspended sentence for committing an offense

threats to act on a public authority, but was later resolved

District Court in Olomouc Ref. 5 T 273 / 2015-396 of 2 October 2017 criminal case

the accused is transferred to the statutory city of Olomouc, the commission for hearing misdemeanors, concluded that it is not a criminal offense.

[4] The conduct of the accused was first described by the administrative authority of the first instance as committing an offense pursuant to Section 44a of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain laws, in the form of indirect intent by disclosing personal data XXXXXX, employee XXXXXX, in the range of maiden name, date and place of birth that obtained from the file of criminal proceedings file no. No. 5 T 273/2015, which should have violated the obligation set out in § 8b paragraph 1 of Act No. 141/1961 Coll., On Criminal Procedure (Criminal Procedure Code). According to this 1/3

provisions of the person to whom the law enforcement authorities have provided information to which applies to the prohibition of publication pursuant to Section 8a (1), second sentence, of the Criminal Procedure Code for criminal purposes proceedings or for the exercise of rights or for the fulfillment of obligations stipulated by a special legal regulation, they may not provide them to anyone unless they are necessary for those purposes, which these persons must be instructed. Therefore, the order ref. UOOU-08596 / 17-5 of 19.

October 2017, the accused was fined CZK 3,000. Against this order, however the accused gave due resistance.

[5] In the following proceedings, the accused was found guilty of identical conduct offense, but this time according to § 44 par. 1 let. c) of Act No. 101/2000 Coll., as he had violate the duty of confidentiality in the form of indirect intent, by disclosing personal data XXXXXX, employee XXXXXX, in the range of maiden name, date and place of birth that obtained from the file of criminal proceedings file no. No. 5 T 273/2015. This publication, implemented from 23. August 2017 at least until October 18, 2017, should have violated the obligation set out in § 15 para. 1 Act No. 101/2000 Coll., ie the obligation of the person who, within the framework of performance stipulated by law

authority and duties come into contact with the controller's personal data, maintaining confidentiality about this personal data. For the act in question, the accused was then ordered by ref.

UOOU-08596 / 17-19 of 6 February 2018 imposed a fine of 3,000 CZK.

[6] However, this decision was based on the defendant 's appeal against

the stated insufficiently ascertained state of affairs by the decision of the President of the Office ref.

UOOU-08596 / 17-40 of 26 April 2018 was annulled and the case was returned to the administrative body first instance for reconsideration. After carrying out the required investigations, the administrative authority first instance, however, issued a decision no. UOOU-08596 / 17-56 of 20 June 2018

whose statement was identical to the statement of decision no. UOOU-08596 / 17-19 of 6 February 2018.

[7] Decision no. UOOU-08596 / 17-56 of 20 June 2018 again attacked by appeal

the accused was then a decision of the President of the Office ref. UOOU-08596 / 17-64 of

July 27, 2018 confirmed. However, the accused subsequently turned to the Municipal Court

in Prague, seeking an annulment of the President's decision

Office, to which the Municipal Court in Prague by judgment no. 13 A 91 / 2018-27 of 23 February 2021 complied.

[8] In the reasoning of the present judgment, the Municipal Court in Prague first recalled

Judgment of the Supreme Administrative Court Ref. 3As 3 / 2017-38 of 17 July 2017.

Referring to this verdict, the Municipal Court in Prague stated that the accused was a trustee

personal data and therefore his actions are subject to the rights and obligations that the controller

result from personal data protection regulations. Provisions of § 15 of Act No. 101/2000 Coll. then

imposed an obligation of confidentiality on persons other than the administrator. From the logic of things, therefore, on

the accused could not be subject to the duty of confidentiality pursuant to the provisions of Section 15 of the Act

No. 101/2000 Coll., to which both the contested decision of the President of the Office and him referred

previous decision of the administrative authority of the first instance, so

he also referred to him

and the legislator in enshrining the factual nature of offenses under § 44 paragraph 1 of the Act

No. 101/2000 Coll. Therefore, the accused could not have committed an offense under § 44 para. c) last of the said Act, however, it is not excluded that the accused by his actions by the Municipal the court in Prague found another offense to be sufficiently proven.

II. Assessment by the appellate body

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[9] The Office is the opinion of the Municipal Court in Prague expressed in the judgment no. 13 A 91 / 2018-27 of 23 February 2021 bound (see § 78 para. 5 of Act No. 150/2002 Coll., Judicial Code administrative).

[10] It is further recalled that the Appellate Body did not find any clear reason to stop the proceedings. With regard to the provisions of § 152 para. a) and § 90 par. 1 let. C) Act No. 500/2004 Coll., as the accused would be in danger of harm due to the loss of opportunity appeal, then the appellate body does not even have the power to bring the matter decided that the decision of the administrative body of the first instance ref. UOOU-08596 / 17-56 of On June 20, 2018, it was changed in accordance with the requirements of the judgment of the Municipal Court in Prague Ref. 13 A 91 / 2018-27 of 23 February 2021.

[11] For the above reasons, the Appellate Body therefore ruled as stated in the operative part of this Decision.

[12] In the following procedure, the administrative authority of the first instance should therefore comply with the requirements of the judgment of the Municipal Court in Prague ref. 13 A 91 / 2018-27 of 23 February 2021 to decide whether the accused has not committed an offense other than the offense under Section 44 paragraph 1 of Act No. 101/2000 Coll. This will be based on the status determined by the previous proceedings the fact that the accused was in the position of controller of personal data. Without the appellate body intended to restrict in any way the administrative authority of the first instance in its decision-making power, states that any of the offenses under Section 44 (2) of the Act would be considered No. 101/2000 Coll., especially the application of the provisions of § 44 para. e) of the Act No. 101/2000 Coll., according to which the processing of personal data without consent is an offense

data subject except in the cases specified in § 5 paragraph 2 and § 9 of Act No. 101/2000 Coll. At the same time however, it will be necessary to assess whether the conduct in question is also an offense under existing law amendments, represented in particular by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and on the repeal of Directive 95/46 / EC and Act No. 110/2019 Coll., on the processing of personal data. More specifically, eg in relation to the above-mentioned offense referred to in § 44 para. e) of Act No. 101/2000 Coll., it will be necessary to assess whether the conduct in question is not in accordance with § 17 et seq. Act No. 110/2019 Coll., where he was newly established a legal title concerning the processing of personal data for journalistic purposes.

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, April 19, 2021

official stamp imprint

Mgr. Jiří Kaucký

chairman

(electronically signed)