OFFICE FOR PERSONAL DATA PROTECTION

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Ref. UOOU-05185 / 14-31

DECISION

Chairwoman of the Office for Personal Data Protection as an appellate body competent pursuant to § 2, § 29

and Section 32 of Act No. 101/2000 Coll., on the Protection of Personal Data and on the Amendment of Certain Acts,

and pursuant to Section 10 and Section 152, Paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code,

decided on 14 June

2018 according to the provisions of § 152 par. 6 let. a) 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-05185 / 14-13 of 30 July

2014 is annulled and the case is returned to the administrative body of the first instance for a new hearing.

Justification

Administrative proceedings on suspicion of committing an administrative offense pursuant to Section 45a (1) and (3) of the Act

No. 101/2000 Coll. was initiated on 28 May 2014 by the delivery of the notice of initiation

party to the proceedings, the company

based

('the party to the proceedings'), at the initiative of the then President of the Office

for Personal Data Protection (hereinafter referred to as the “Office”) RNDr. Igor Němec.

On the basis of the performed evidence and the collected file material, he issued an administrative one

first instance body on 30 July 2014 decision no. UOOU-05185 / 14-13, laying

found the party guilty of committing an administrative offense pursuant to Section 45a (1) and (3) of the Act

No. 101/2000 Coll. by the disclosure of wiretapping and recording information

telecommunication

record

telecommunications traffic carried out

from wiretapping

and information

obtained

operation

and

and

published in the newspaper

and through the news portal

information specified in the decision in question.

By doing so, according to the administrative body of the first instance, the party to the proceedings violated the obligation stipulated in § 8c of Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code), according to which no one may disclose without the consent of the person to whom such information relates

information on the regulation or execution of interception and recording of telecommunication traffic according to § 88 of the Criminal Procedure Code or information obtained from it, data on telecommunications traffic ascertained on the basis of an order pursuant to Section 88a of the Criminal Procedure Code, or information obtained by surveillance persons and things pursuant to Section 158d Paragraphs 2 and 3 of the Criminal Procedure Code, if they allow the identification of this person and if they have not been used as evidence in court proceedings. She was a participant for this administrative offense fined CZK 240,000.

The findings of fact made by the administrative authority of the first instance assessed that the data published by the party to the proceedings are personal data, as they relate to specified or identifiable ones

data subjects. Furthermore, the administrative body of the first instance stated that the party to the proceedings had published information to which the prohibition contained in Section 8c of the Criminal Procedure Code applies to a general extent, and that he did so through the press and a publicly accessible computer network.

The party filed an appeal against this decision, which was a decision of the chairman Office ref. UOOU-05185 / 14-20 of 26 September 2014 rejected.

This decision was subsequently challenged by a party in an administrative action before the Municipal Court in Prague (hereinafter referred to as the "Municipal Court"), which in its judgment no. of 9 August 2017 dismissed the party's action.

The city court found it proven that the source of the articles was police wiretaps and records telecommunications traffic, which, according to him, is also clear from the statements of the party to the proceedings (the plaintiff) and the structure and form of the information provided to the public. Violation of § 8c of the Criminal Procedure Code was also considered by the municipal court to be proven and the party's reference to decision of the ECtHR in the RADIO TWIST case as inadmissible, as there was a conversation between public interest policy. Similarly, in the resolution of file no. Pl. ÚS 10/09 (to which the party referred in the grounds of its action) commented on the case which is not similar to the current one. In assessing the requirement for completeness of the notice of initiation the procedure was based on the judgment of the Supreme Administrative Court of 31 March 2010, Ref. 1 Afs 58 / 2009-541, and did not find a violation of the law in this case. As far as possible of the identifiability of explicitly unnamed persons pointed to § 4 letter a) of the Act on the protection of personal data and the fact that these data were also included in the data contained in the articles determinable. According to the municipal court, it is also completely undecided whether the persons concerned have filed a criminal case notification or whether they have indicated their concern in any way. In this case, the derivation was sufficient administrative liability and there was no need to resort to criminal liability.

According to the Municipal Court, the Office also duly considered whether the party to the proceedings published

information has not been published before and concluded from the principle of two instances that
if this assessment (ie an analysis of the content and form of the notion of publication) contained a decision
on decomposition. The municipal court also ruled in favor of the administrative authorities in the evaluation of the use
he did not consider wiretaps in court proceedings and possible publication in court proceedings
decisive. The Municipal Court also called the assessment of proportionality between the right to
protection of privacy and the right to freedom of expression. Public interest in criminal information
According to the Municipal Court, the activities of public figures cannot be confused with interest
to publish specific and detailed wiretap transcripts. Even public persons have a right
for privacy. Factual information obtained from these wiretaps could also be disclosed,
that the protection of privacy is respected and that the right to protection is not infringed
privacy of others. It is in the public interest to inform about the influence on political decisions

whose
prime minister, however, there is no public interest in the specific content of his communication.
The object of protection is not just
but also other people whose calls
they had nothing to do with crime
and they were not even purely political. Urban
the court further stated that it respects that public persons must endure greater criticism (here
referred to the judgment of the Constitutional Court of 15 March 2005, file no. I. ÚS 367/03), in the given
however, this was not a criticism of the prime minister. The fact that the wiretaps involved one
of the highest constitutional officials, according to him, does not represent a liberation reason. Municipal Court
he also agreed with the Office's considerations on the amount of the fine.
The party to the proceedings filed a cassation appeal with the Supreme Court against this judgment of the Municipal Court
to the administrative court, which he based on the grounds of cassation pursuant to § 103 para. a), b), and d) of the Act
No. 150/2000 Coll., the Code of Administrative Procedure (hereinafter "SŘS"), therefore objected to the

in the incorrect assessment of the legal issue by the court, the lack of factual findings in the administrative proceedings and unreviewability of a judgment based on incomprehensibility or inadequacy in the statement of reasons, or any other procedural defect capable of affecting the legality of the judgment. of 3 May repealed both

The Supreme Administrative Court, in its judgment no. so the decision

Judgment of the Municipal Court in Prague of 9 August 2017, Chairman of the Office Ref. UOOU-05185 / 14-20 of 26 September 2014 and returned the case to the Office for further management.

In assessing the merits of the appeals, the Supreme Administrative Court stated concerning cassation objections according to § 103 par. 1 let. d), Act No. 150/200 Coll. SRS, then unreviewability of the judgment of the Municipal Court of 9 August 2017, Ref. that he did not find that the judgment was unreviewable, as the reasoning underpins the statement and settles it sufficiently in support of the action.

On the objection of insufficient finding of fact according to § 103 par. 1 let. b) SŘS Supreme the administrative court stated that it also did not find this reason fulfilled. The party to the proceedings (the applicant - the complainant) did not consider it established that the source of the information published by him was wiretaps, which he himself stated in his statement of 14 August 2014 and, moreover, according to the Supreme Administrative Court, the origin of the information is clear from the articles themselves published in the non-tabular press in a structure corresponding to the call record as it the municipal court stated in the reasoning of its decision. Definition of the subject in the notification on the initiation of administrative proceedings, the Supreme Administrative Court found it sufficient, while more detailed the definition of the act was included in the notice of acquaintance with the documents, ie before decision. The Supreme Administrative Court also points out in this connection that the party to the proceedings he could not have had doubts as to the definition of the act, as he had responded to the notice of initiation

adequately and with knowledge of the matter. In connection with the specification of the content of the article, it was an

administrative body

The first instance also provided a circle of persons whose privacy was to be violated and which the participant

the procedure itself in its statement of 12 June 2014, from which it is clear that

it was not just a matter of privacy

Content of the term

disclosure was, according to the Supreme Administrative Court, thoroughly explained by the appellate body, which

emphasized the importance of publication in terms of form and repetition and elaborated on previous publication

it did not contain a transcript of wiretaps.

and

With regard to the cassation objection pursuant to § 103 para. a) SŘS directed against correctness

assessment of a legal issue by a court, the Supreme Administrative Court to a party to the proceedings to a substantial extent

3/4

he agreed. In this context, the Supreme Administrative Court dealt mainly with the proportionality test

the right to information and privacy, when found that the appellate body and the city court

insufficiently categorize the information with regard to the scope of publication permissible within the meaning of § 8d

of the Criminal Procedure Code, which would in turn lead to a modification of the scope of tortious conduct

party to the proceedings. The Supreme Administrative Court gives instructions for this modification in paragraph 42, stating

that it is

in particular, it is necessary to protect the privacy of the persons covered by the surveillance ordered

and Mrs.

, Mr.

so madam

against whom he was

according to the Supreme Administrative Court, the content of information is even derogatory (this is a partial content

article specified by the Supreme Administrative Court under paragraph 39 letter b). A clear advantage

protection of privacy over the public interest then sees the Supreme Administrative Court in an article that
specified in point 39 (a) f), because in his opinion it is a private communication
content. Overall, the Supreme Administrative Court concludes that “there is no denying the upper hand
public interest in publishing information where that information informs the public that
that the Prime Minister was relevantly influenced by a person in his decision-making,
that such conduct did not formally take place and that that person communicated with the staff
intelligence services in matters of their private interest to the Prime Minister. Completely
the publication of wiretaps and telecommunication traffic records was thus problematic and was
the scope of the information should be limited, but if this did not happen, it was up to the defendant and his
the President to classify this information and deal responsibly with the extent to which it was
disclosure of such information is permissible within the meaning of Section 8d of the Criminal Procedure Code. He should have
done the same
and the city court. The complainant can thus be substantially accused of making the wrong statement
legal assessment of the matter in the sense of § 103 par. 1 let. a) s. ř. s. "
The Supreme Administrative Court also stated that an administrative offense under Section 45 and Paragraphs 1 and 3 of the
Act
No. 101/2000 Coll. is not bound by the proposal of the person concerned or by the degree of his involvement, of which
absence, the party wrongly infers a lack of social harm, and therefore
non-compliance with the "ultima ratio" principle. In conclusion, the Supreme Administrative Court commented on the amount
awarded
fines, which he found to be legal and duly justified, but in view of the difference
the legal opinion of the Supreme Administrative Court on the scope of tortious conduct stated that after
its redefinition by the administrative body will also have to be reconsidered on the amount
fines.
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, June 14, 2018

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman