OFFICE FOR PERSONAL DATA PROTECTION

Lt. Col. Sochora 27, 170 00 Prague 7

tel .: 234 665 111, fax: 234 665 444

posta@uoou.cz, www.uoou.cz

* UOOUX00DKE1V *

Ref. UOOU-01129 / 19-22

DECISION

Chairwoman 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 in accordance with the provisions of § 152 para. 6

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

Decision of the Office for Personal Data Protection ref. UOOU-01129 / 19-16 of 10 June 2019

is canceled and the proceedings are stopped.

Justification

The Office for Personal Data Protection (hereinafter referred to as the “Office”) was a resolution of the Kuřim Municipal Office,

Ref. MK / 3142/19 / KÚ of 19 February 2019 referred the case to Mr XXXXXXX,

born XXXXXXXX, apartment XXXXXXXX (hereinafter "accused"). From the relevant file

The material revealed that the accused posted on August 8, 2018 at 2:23 pm and at 2:51 pm as

registered user "XXXXXXX", under the article entitled "He touched a colleague, now is judged by

place ”placed on the web portal www.novinky.cz two comments. One of them had

contain personal data XXXXXXXX, namely that XXXXXXX should have tried for the first time 15 years ago

to file a criminal complaint of rape against his superior in the previous place of work in Zlín and beyond

information that the public prosecutor should have marked her as unreliable and no one had been convicted.

The accused was to obtain the published information from the file kept in the criminal proceedings

under sp. No. 4 T 73/2017, from the part that related to the previous proceedings and was only non-public

annexed to that file. In this context, it should be noted in particular that on the basis of

court proceedings conducted at the Municipal Court in Brno under file no. No. 4 T 73/2017 was accused
convicted of a double rape offense, and the accused tried XXXXXX
disadvantage by pointing to another thing that has been addressed in the past. Relevant
the criminal file kept at the District Public Prosecutor's Office in Zlín has become an annex to the criminal file
in the case of the accused precisely at the request of the accused.
Based on the state of affairs thus determined, the administrative body of the first instance issued an order ref. UOOU-
01129 / 19-5 of 19 March 2019, by which the conduct of the accused was classified as an offense

offense pursuant to Section 44a, Paragraphs 1 and 3 of Act No. 101/2000 Coll., on Personal Data Protection and on Change
certain laws, for which he was sentenced to administrative reprimands. Properly administered resistance
however, the said order was revoked and the administrative body of the first instance of the Office continued with the
administrative
management.
Based on its results, the administrative body of the first instance issued a decision ref. UOOU-
01129 / 19-16 of 10 June 2019 (hereinafter "the decision") by which the accused in the statement I.
found guilty of committing an offense under Section 44a (1) and (3) of Act No. 101/2000 Coll., because
by the conduct in question, it infringed the prohibition through a publicly accessible computer network
disclosure of personal data provided for by special legislation, in the form of indirect
intention. In that regard, the administrative authority of the first instance stated, in particular, that the
XXXXXX was identified as victims of the crime of rape pursuant to Section 185
Act No. 40/2009 Coll., the Criminal Code, which violated the obligation set out in § 8b par.
2 of Act No. 141/1961 Coll., The Criminal Procedure Code, according to which no one may in connection with a criminal
offense
committed on the injured party by any means to disclose information enabling the finding to be made
the identity of the injured party who is a person under the age of 18 or against whom a criminal offense has been committed
the act of murder, homicide, one of the offenses which has caused serious damage to health,

sexually transmitted crime, one of the crimes against a woman 's pregnancy, criminal
trafficking in human beings, one of the crimes against human dignity in the sexual field,
criminal offense of abandonment of a child or a trusted person, abuse of a trusted person, abuse of a person living in
common residence, abduction of a child and a person suffering from a mental disorder or dangerous person
persecution. For these reasons, the statement of II. administrative decision is imposed on the accused
punishment of reprimand and statement III. the defendant was obliged to pay the decision
costs.
On the other hand, proceedings with the accused for a misdemeanor pursuant to Section 44a (1) and (3) of Act No. 101/2000
Coll.,
which he was to commit by “having, although the accused was duly informed of his duty of confidentiality, published
on August 8, 2018 on the web portal www.novinky.cz a comment containing personal data
XXXXXX, which he obtained from a publicly inaccessible part of the criminal file that was part of another
file material file no. No. 4 T 73/2017 ”, which was to violate the obligation set out in § 8b paragraph 1
Act No. 141/1961 Coll. was the statement of IV. decision stopped because of committing this act
has not been proven to the accused.
Statements I., II. and III. however, the decisions were challenged by the proper dissolution of the accused. It was in him
in particular, it stated that the administrative body of the first instance was based on incorrect and unsubstantiated ones
findings of fact when he stated that the accused should have obtained the published data from the file
material conducted in criminal proceedings under file no. No. 4 T 73/2017, from the part that concerned
previous proceedings and was only a non-public annex to that file. The accused further emphasized
that the name XXXXXX was not mentioned in the discussion and therefore considers that it could not have occurred
identifying her person with the information given in the commentary to the article. As well as the accused
stated, it was not the subject of proving whether XXXXXX filed a criminal complaint in Zlín
nor whether the case was decided in court. The file number was not mentioned in the commentary,
also the exact factual nature of the crime is absent, as well as time has not been taken into account
aspect of a case that was supposed to take place 15 years ago and is not even built on who

comment physically written. For these reasons, the accused proposed a decision in the contested part cancel and stop the proceedings.

2/5

The appellate body reviewed the decision in its entirety and also considered the arguments accused.

In that regard, the Appellate Body states, in particular, that the defendant's allegations should be rejected, according to which it was not built to be sure who wrote the comment physically. From the file material, how moreover, it also mentioned the contested decision, in particular in response to a request for information to the web portal www.novinky.cz from the operator of this portal of the company Seznam.cz, a.s., it appears that the account "XXXXXX" was created by the user of the email address XXXXXX, The registration details for this email address are as follows: name - XXXXXXX, year of birth - XXXXXX, gender - male, date of e-mail address - August 10, 2004. At the same time they were Seznam.cz, a.s., provided IP addresses (185.149.128.27; 185.149.130.160 and 176.74.139.221), of which there were comments on the portal at the time of publication approached. The first two IP addresses are the addresses of the Czech provider, the third IP address belongs providers from Poland, Brazil and Argentina, indicating the use of an anonymizer. Based finding out IP addresses, the Municipal Court in Brno issued an order to all on November 21, 2018 natural and legal persons engaged in telecommunications activities and providing telecommunications services in the Czech Republic to provide data on users of IP addresses, supplied by Seznam.cz, a.s. For IP addresses 185.149.128.27 and 185.149.130.160 was end user XXXXXX and connection address XXXXXX detected. The IP address 176.74.139.221 was XXXXXX detected. From the state of affairs thus determined, it can be reliably deduced the conclusion that the originator of the comment in question is the accused.

Furthermore, the Appellate Body recalls that in terms of the obligation imposed by the provision of § 8b para of Act No. 141/1961 Coll., the observance of which is in this case, is the source of the published ones information is completely irrelevant. Address whether the published information comes from the file

material conducted in criminal proceedings under file no. 4 T 73/2017 or not, therefore completely lacks on
sense. The source of the information would be relevant in the case of infringement proceedings
obligations stipulated in § 8b paragraph 1 of Act No. 141/1961 Coll., however, the proceedings in question were
statement IV. decision stopped.
At the same time, however, it must be recalled that the offense under Section 44a (1) of Act No. 101/2000 Coll.
in conjunction with Section 8b (2) of the Criminal Procedure Code, the disclosure of personal data in the form of
information enabling the victim to be identified who is under the age of 18 or
against which any of the relevant provisions of the listed offenses have been committed,
including the sexual offenses concerned in this case.
This is a misdemeanor, which is part of Act No. 101/2000 Coll., Which is to be discussed
competent authority, however, this offense does not correspond to the main subject of the regulation
Act No. 101/2000 Coll., which is the processing of personal data, ie "any operation or
a set of operations which the controller or processor systematically carries out with personal data, namely
automatically or by other means ”[see § 4 letter e) of Act No. 101/2000 Coll.]. That, of course
does not alter the validity of the conclusion reached by the administrative authority of the first instance that
despite the repeal of Act No. 101/2000 Coll. as of April 24, 2019, it is necessary, given the provisions
§ 66 paragraph 5 of Act No. 110/2019 Coll., On the processing of personal data, complete this procedure in accordance with
Act No. 101/2000 Coll.
The basic feature of the offense according to § 44a paragraph 1 of Act No. 101/2000 Coll. in conjunction with § 8b
Paragraph 2 of the Criminal Procedure Code, as indicated above, is that the publication in question was

made it possible to find out the identity (or identify) of the injured party. This actually means that
the published information gives a real possibility to distinguish the injured party from others (not necessarily
provide direct identification). However, such a possibility is already established in the treated matter
primarily published article "He touched a colleague, now he is being sued for a place". You can find out from it
the full name of the accused (including his photograph), as well as an indication that he was a Brno police officer

harassed his colleague, for which he was sentenced to prison. That's why

it was clear that the victim was a close associate of the accused. Based on these clues and also

taking into account the fact that the criminal proceedings in question were public, it would then be possible

to distinguish the injured party from others, thus finding out its identity, albeit within a very limited

circle of people. However, the publication of that article was not the subject of these proceedings. Alone

the comment for which the accused was affected then read as follows:

"Well, I guess you should all know what it is. 15 years ago, she tried it

for the first time and filed the first criminal report of rape against her superior in the past

in Zlín, where she worked for the Municipal Police. At that time, however, the courts were normal and did not convict them

and the prosecutor called her unbelievable. Repeated directing in Brno, no evidence, nothing but

with an afterword of American malice called MeToo, condemns the innocent - that's what it's called

democratic society. "

The comment, as far as the victim is concerned, states that she was on her side fifteen years ago

A criminal complaint was filed with a superior against the rape by the Zlín Municipal Police

and subsequently had to be declared unreliable by the public prosecutor. This comment, however

does not contain any direct identifier of the damaged and therefore from the comment itself hers

identity cannot be established. Information on the workplace damaged 15 years ago and the course of its then

The criminal report is so unverifiable by third parties (the public) that it cannot be identified

damaged really can not serve. Only theoretically (speculatively) published data are possible

understood as a supporting "clue" in connection with a primarily published article, however

even in this context, it is not a concretization that could lead to identification

damaged beyond the very limited range of persons who was able to injured

already identified on the basis of a primarily published article.

It should be noted that the degree of veracity of the comment in question is, from the point of view of this proceeding,

resp. with regard to the wording of the provisions of Section 44a, Paragraph 1 of Act No. 101/2000 Coll. in conjunction with §

8b para. 2

of the Criminal Procedure Code (see above) is essentially irrelevant and has therefore not been specifically examined. Yippee however, it was clear that the purpose of the comment was not so much to identify the victim as to be discredited by reference to her alleged defects in character. This cannot be overlooked the level of defense of the accused was probably clearly assessed by the criminal court.

The appellate body therefore found the administrative body's interpretation of the relevant legislation first instance is unacceptably extensive and has therefore ruled as indicated in the operative part of this decision. It was possible to make such a decision, as the original was complied with without prejudice to any of the parties to the proceedings. From a general point of view then the Appellate Body notes that, with regard to the subsidiarity of administrative punishment, resp. it would be more appropriate to address the matter through other legal instruments, e.g. provisions of the Civil Code governing the protection of the individual, when they could be taken primarily take into account the quality (accuracy) of the information published and not address the degree of identifiable identity the victim of a criminal offense.

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, September 25, 2019

official stamp imprint

JUDr. Ivana Janů

chairwoman

(electronically signed)