OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00DAS1R *

Ref. UOOU-09728 / 18-36

DECISION

Chairwoman of the Office for Personal Data Protection as the appellate body competent pursuant to § 10

and § 152 paragraph 2 of Act No. 500/2004 Coll., the Administrative Procedure Code, decided on 13 May 2019 pursuant to

provisions of § 152 par. 6 let. b) of Act No. 500/2004 Coll., Administrative Procedure Code, as follows:

Dismissal of the party to the proceedings, XXXXX, born XXXXX, against the decision of the Office for Personal Protection

data ref. UOOU-09728 / 18-31 of 19 March 2019 is rejected and the contested decision is upheld

confirms.

Justification

Administrative proceedings on the imposition of measures to eliminate the identified deficiencies pursuant to Section 40 of the

Act

No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts kept against

party, XXXXX, born XXXXX ('the party') was initiated by the issuance of an order

Office for Personal Data Protection Ref. UOOU-09728 / 18-2 of October 26, 2018. Background

for its issuance, the XXXXX complaints were delivered to the Office for Personal Data Protection (hereinafter referred to as

"Office") in the period from June to September 2018, the subject of which was the disclosure of personal data

of complainants on the website https: XXXXXX, in the form of an abridged version of the judgment

Of the Supreme Administrative Court of the Czech Republic (hereinafter "SAC") and within the overview of court proceedings.

Other documents were provided by the Office on 20 and 25 September and 5 October 2018 on the basis of Section 3 of the

Act

No. 255/2012 Coll., on control (control rules), from the above-mentioned websites of the party to the proceedings,

resp. websites of the NSS, http://www.nssoud.cz, and the Ministry of Justice of the Czech Republic

Republic (hereinafter "MSpr"), https://infojednani.justice.cz.

Following that procedure, it was found that the party's website was https: // XXXXX

In the section "Overview of court proceedings", information on court proceedings is published, which

was ordered in all high, regional, municipal and district courts, to an extent almost

2 million records. The content of the information published for each meeting is identification

of the competent court, designation of the meeting room, date and time of the hearing, meeting number, title, name

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information about

and the surname of the solver, the type of proceedings (proceedings, promulgation of the judgment, etc.) and the title, name

and surname

parties to the proceedings (in the case of natural persons). Each record then includes a link to the report

proceedings on the MSpr website (http://infosoud.justice.cz).

It was also found that in the section "Archive of the official board of the NSS" on the website of the party to the proceedings

https: // XXXXX NSS judgments are published, both abbreviated and anonymized

version of the entire judgment, including a statement of reasons, of around 4,300 records relating to

judgments of the NSS. The content of the information given for each judgment is the date of publication

judgment, reference number, area concerned and title, first and last name of the parties

management (in the case of natural persons). At the same time, an abridged version of the judgment of the Supreme Court

and the

in some cases, an anonymised version of the whole judgment, including the reasons. When,

if one of the parties to the proceedings was a natural person, then there are abbreviated versions in the statement

the judgment of the Supreme Court stated the personal data of this participant in the range of name, surname and address

residence and further it is stated here how the SAC decided in the given case (ie information on the outcome of the

proceedings before

NSS). If the SAC has already published an anonymised version of the entire judgment in the given case, it is possible with using the information contained in the record and the identification data in the abridged version of the judgment in also assign all information about the subject and course of the proceedings to the given natural person.

From the links placed to the individual records published on the website https.//XXXXX in the overview of court proceedings and further from publicly available information (especially to https: // XXXXX, which the party also operates) then it turned out that the party above described

MSpr

(http://infojednani.justice.cz). The party to the proceedings regularly collects from this source information on ordered court proceedings, then post this information on its website https: // XXXXX, where it continues to process (publish) them, virtually unlimited

time. On the MSpr website https://infojednani.justice.cz are published

information on court proceedings, which was ordered for the next 30 days, ie so far did not take place. The information includes the date and time of the meeting, room, title, name and surname researcher, type of proceedings (proceedings, promulgation of judgment, etc.), title, name and surname of the participants proceedings (in the case of natural persons) and whether it is a closed session; and whether the meeting was canceled. This information is no longer available after the hearing in question listed MSpr website available. On the website of MSpr https://infosoud.justice.cz information on the course of court proceedings is then published, ie an overview of individual events that occurred during the proceedings. To a certain file mark are information on the status of the proceedings is published on this website (final pending case) and the course of the proceedings, ie the type of event that occurred in the proceedings (eg initiation of proceedings, order of proceedings, issuance of a decision). This information is available here even after however, the content of the proceedings in question is legally terminated, but they do not contain any of them

stage of the proceedings - personal data of the participants in the court proceedings.

With regard to the judgments of the SAC, it was found that the party collects the published judgments

on the official board of the NSS, which is accessible remotely via the website of this

court http://www.nssoud.cz. Judgments collected in this way, abbreviated and anonymised,

the party places the procedure on its website https: // XXXXX, where it continues to publish it (ie

processes the personal data contained therein), in fact for an indefinite period. NSS on its own

the official board, and therefore also on the website http://www.nssoud.cz, declares in accordance

with Section 49, Paragraph 12 of Act No. 150/2002 Coll., the Code of Administrative Procedure, shortened judgments by

posting

written statement without justification for a period of 14 days, if they are at the time of delivery of the judgment

from web

draws

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only judicial persons are present. After this period, an abridged version of the judgment is ex officio

the board is removed and is subsequently replaced by an anonymised version of the reasoned judgment.

The identification data of the participants in the proceedings are thus on the official board of the NSS (and on the website of

the

http://www.nssoud.cz) accessible only for a period of 14 days, and only in the form of an abbreviated version

of the judgment and not at the same time as the anonymised version of the judgment, which describes the procedure in detail

management.

On the basis of these facts, the administrative body of the first instance issued a decision no. UOOU-

09728 / 18-16 of 4 December 2018, ordering the party to proceed within the prescribed period

the following measures:

1. stop publishing personal data XXXXX (in the form of an abbreviated version of the NSS judgment) a

XXXXX (in the form of a summary of court proceedings) at https: // XXXXX,

2. terminate the disclosure of personal data of participants in court proceedings that have already taken place on

website https: // XXXXX,

3. to end the publication of personal data of participants in court proceedings before the SAC, after

14 days after the publication of the judgment in question on the official notice board of that court, at

website https: // XXXXX.

Against the decision no. UOOU-09728 / 18-16 of 4 December 2018, the party objected

due process, on the basis of which the President of the Office by her decision ref. UOOU-

09728 / 18-23 of 4 February 2019 contested decision of the administrative body of the first instance

annulled and remanded the case for a new hearing. In this context, it was stated in particular that

the first instance administration did not properly consider the overall framework of the European Parliament's regulation

and of the Council (EU) 2016/679 of 27 April 2016 on the protection of individuals with regard to

processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC

(hereinafter "EU Regulation 2016/679"). Article 6 of EU Regulation 2016/679 has been found to

does not contain any legal title attesting to the processing of personal data in question by the participant

proceedings, the decision in which the appeal was lodged allowed for a certain period

disclosure of personal data of litigants and disclosure of personal data

participants in court proceedings before the NSS. Likewise, the decision in question is very inconsistent

reflected the right to erasure (the right to be forgotten) under Article 17 of EU Regulation 2016/679, as

was applied only to five data subjects.

Subsequently issued decision ref. UOOU-09728 / 18-31 of 19 March 2019 (hereinafter referred to as

"Decision"), in addition to the obligation to pay the costs, ordered the party to pay the costs

deadline in connection with the processing of personal data via the web

https: // XXXXX:

1. stop publishing the personal data of the participants on the website https: // XXXXX

judicial

MSpr

(https://infojednani.justice.cz),

2. stop publishing the personal data of the participants on the website https: // XXXXX

court proceedings before the NSS published on the website of this court

(http://www.nssoud.cz).

However, the party to the proceedings again objected to the proper appeal in which it requested

annul the contested decision and refer the case back to the administrative authority of first instance. To

stated that the decision imposes obligations that do not comply with the order no. UOOU-09728 / 18-2

of 26 October 2018, nor decision no. UOOU-09728 / 18-16 of December 4, 2018, and are

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significantly wider. According to the party, the contested decision should not have been adopted

after a proper hearing in the administrative proceedings, as the party to the proceedings

to be imposed on him could be disclosed only from the text of the contested decision itself

and in fact infringes the principle of the prohibition of reformationis in peius. On the merits of the case (processing

personal data which is the subject of this proceeding) then the party to the proceeding did not

facts.

The appellate body reviewed the decision in its entirety, including the previous process

its issue and first dealt with the arguments of the party to the proceedings.

In that regard, the Appellate Body states, in particular, that there is no proceeding in this case

on misdemeanor and the prohibition of reformationis in peius strictly formulated by the provision of § 98 para. 2

Act No. 250/2016 Coll., on liability for misdemeanors and proceedings on them will therefore not apply.

However, it is necessary to recall the provisions of Section 90, Paragraph 3 of Act No. 500/2004 Coll., The Administrative

Procedure Code,

according to which "the appellate body may not amend the contested decision to the detriment of the appellant,
unless the appeal is also lodged by another party whose interests are not identical or are contested
unlawful decision or
another public interest. ”Lastly
recalled provision, the purpose of which is to prevent damage to a party to whom it is concerned
imposed due to the absence of an appeal against the amended
decision, then the reason was why the decision ref. UOOU-09728 / 18-23 of 4 February
2019 previous decision of the administrative body of the first instance, which was the appellate body
found to be partially incorrect and in breach of the law, canceled and the case returned
for a new hearing without the appellate body ruling on the merits.
The appellate body further states that it was a party to the proceedings before the contested decision was issued
provided sufficient scope for the exercise of his procedural rights, in particular by memorandum
Inspectors XXXXX Ref. UOOU-09728 / 18-30 of 27 February 2019 called in accordance with § 36 of the Act
No. 500/2004 Coll. to express its opinion and comments on the basis of the decision. In that
In this context, however, it is necessary to mention the decision of the Regional Court in Brno ref. 62 Ca 1/2007 of 27.
September 2007 (confirmed by the judgment of the Supreme Administrative Court 5 Afs 18/2008 of 29 May
2009), according to which the subject of the decision in question does not include the concept of administrative
a decision to be issued by the administrative authority; the administrative body has no obligation
to acquaint the party with the conclusions to which, on the basis of the evaluation of the documents, with which
acquaints the party to the proceedings, he is only coming of age. The subject of the proceedings was always the imposition
obligations under Article 58 (2) (a) (d) EU Regulation 2016/679 to the party in relation to
processing of personal data via the website https: // XXXXX.
As for the extension of the obligations imposed, this was clear from the decision
President of the Office Ref. UOOU-09728 / 18-23 of 4 February 2019, in which he expressed legal
the view that no legal title was found for the processing of personal data in question
within the meaning of Article 6 of Regulation (EU) 2016/679. Based on § 90 par. 1 let. b) of Act No. 500/2004 Coll.

the administrative body of the first instance was then bound by this legal opinion when the matter was re-examined.

The contested decision therefore fully reflects that legal opinion.

The appellant therefore rejected the party's arguments and, after an overall examination

found no reason to make the decision illegal. The same applies to the appellate body

found no errors in the procedure of the administrative body of the first instance. Based on all

therefore ruled as set out in the operative part of this Decision.

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 13, 2019

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman