OFFICE FOR PERSONAL DATA PROTECTION

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* UOOUX00CF3ZK *

Ref. UOOU-12027 / 17-24

DECISION

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

and § 32 of Act No. 101/2000 Coll., on the protection of personal data and on the amendment of certain acts, and according to

§ 10 and § 152 paragraph 2 of Act No. 500/2004 Coll., Administrative Procedure Code, decided on 12 June 2018 according to

§ 152 par. 6 let. b) of Act No. 500/2004 Coll. thus:

Disintegration of the accused, the company

based

, against the decision no. UOOU-12027 / 17-14 of

March 27, 2018, is rejected and the contested decision is upheld.

Justification

based

Administrative proceedings for suspicion of committing an offense pursuant to § 45 para. e) of the Act

No. 101/2000 Coll. was launched against the company

(hereinafter referred to as the “accused”), by notification received

on 5 February 2018. The Office for Personal Data Protection (hereinafter referred to as the “Office”) as an administrative body

first instance by decision no. UOOU-12027 / 17-14 of 27 March 2018 (hereinafter

"Decision") found the accused guilty of committing an offense under § 45 para. E)

Act No. 101/2000 Coll. The accused was to commit the offense by reporting on the crime program

message broadcast on

hours published information

on the state of health of the witness and the victim in the criminal proceedings, who changed his name to

and further

information that it was total

, thereby

processed sensitive data in the sense of § 4 letter b) of Act No. 101/2000 Coll. contrary to duty

according to § 9 of Act No. 101/2000 Coll., ie the obligation to process sensitive data exclusively

with the express consent of the data subject and without this consent only upon fulfillment of any of

legal exceptions according to § 9 letter b) to i) of Act No. 101/2000 Coll. For the above conduct

a fine of CZK 20,000 was imposed on the accused. The accused was served with the decision on

On March 27, 2018, and on April 11, she filed an appeal against him. The appeal was thus filed in law

deadline and will be further addressed by the appeal body.

, and that he was

in time

1/6

so

degree criticizes

both procedural defects,

The accused filed the appeal and challenges all the statements of the decision and the administrative body

of the first

and an error of law

and the unreviewability of the decision. It states, first, that in its observations of 20 February 2018

requested that, with reference to Section 36, Paragraph 3 of Act No. 500/2004 Coll., the Administrative Procedure Code,

the concept of the operative part and the reasoning were sent to the gathering of the basis for the decision

decision in such a way that it can express itself properly in its defense. She also asked whether

and, where appropriate, what public interest is in accordance with Article 17 (4) of the Charter of Fundamental Rights and

Freedoms (hereinafter "the Charter")

"LZPS") is monitored by the administrative authority of the first instance through ongoing misdemeanor proceedings, including

further justification. Because the administrative body of the first instance to the questions asked

he did not answer and immediately issued a decision, in the opinion of the accused he should have been prevented

rights of defense at first instance.

The accused further stated that the right to personal data protection is not an absolute right and must

be in balance with other fundamental rights. In her view, the possibility cannot be inferred

restrictions on freedom of expression and the right to seek and disseminate information pursuant to Article 17 (4) of the LZPS

from the mere categorization of personal data as sensitive data in the sense of § 4 letter b) of the Act

No. 101/2000 Coll. He further notes that the disclosure of sensitive data is a common media practice and is

in accordance with the legal license according to the Civil Code. The accused further emphasized the strange

the nature of journalistic activity and the fact that the Czech legislator did not translate it into law

No. 101/2000 Coll. special regime of personal data processing for the purposes of journalism, artistic

or literary expression pursuant to Article 9 of Directive 95/46 / EC of the European Parliament and of the Council (hereinafter

referred to as

"Directive 95/46 / EC of the European Parliament and of the Council"). Thus, the administrative body should not be entitled to

apply the law

No. 101/2000 Coll. to journalistic activity without first making sure that the operator

the media has unduly infringed the data subject's right to privacy.

The accused also argues that she is not with her in connection with the publication of data in the report in question

no civil proceedings are pending, with the possibility of privacy by civil law

finds sufficient resources in this regard. Administrative law, resp. criminal law

sanction should therefore be considered an ultima ratio, even with regard to the case law of the Constitutional Court

emerging only when private funds fail and are insufficient.

As the data subject did not defend himself against the disclosure, he considers the accused

the real impact of the publication is insignificant and in her opinion there is zero social

harmfulness of conduct. As a result, it cannot even be an offense.

The accused further argues a question of public interest. In this context, it states that administrative
The authority of first instance did not deal sufficiently with the allegations alleged that all the data
published in the report served to enable viewers to form their own criminal judgment
the case discussed in the report. In that regard, it finds the contested decision
unreviewable.
Furthermore, the accused raised doubts as to whether the administrative body of the first instance was at all properly
and, on the whole, he watched the report in question, and therefore suggested that all the claims be projected to prove it
in her presence.
Last but not least, she commented on the legal title of the publication. In her opinion, both data
O
, considered published
data by the data subject in the sense of § 9 letter g) of Act No. 101/2000 Coll., as these are data which
the data subject himself published in the public hearing. Disclosure of data in the report so
considers it to comply with the above provision, while the administrative body of first instance
, as well as information about

this provision authorizing the processing of sensitive data illegally without the consent of the data subject
conditional on a public interest requirement. The accused refers in this context to diction
provisions of § 9 letter g) of Act No. 101/2000 Coll. provided that no such requirement expressly
does not contain. In addition, she is convinced that she may have a public interest in the possibility of creation
the viewers' own opinion on the case in question.
In conclusion, the appeal presents the view that no increase in the seriousness of the offense can be inferred from the alleged
high stigmatization of the data subject, which should result from the category of sensitive data when administrative
the first instance body did not examine at all the personal circumstances of the data subject and the question whether
in this particular case, stigma has occurred as a result of the broadcast.
In the light of those objections, the defendant claims that the contested decision should be annulled and stopped

proceedings, as the present act is not an offense.

The appellate body examined the contested decision in its entirety, including the process which

preceded its publication, and reached the following conclusions.

Regulation (EU) 2016/679 of the European Parliament and of the Council of

April 27, 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 (General

personal data). Since the offense was committed under the law

No. 101/2000 Coll. and proceedings on the offense were initiated pursuant to Act No. 250/2016 Coll., the Appellate

the authority has reviewed the conduct accused under the previous legislation. The reason is the fact

that the previous legislation is more favorable to the accused, given the fact that

the general regulation on personal data protection allows, in contrast to Act No. 101/2000 Coll. storage

penalties of up to EUR 20,000,000, or 4% of worldwide annual turnover. It is applied in this way

the constitutional principle according to Article 40 para. 6 of the LZPS, according to which the criminality of an act is assessed

and the penalty is imposed according to the law in force at the time the act was committed, and later law

will be used if it is more favorable to the offender.

The appellate body first addressed the objection of procedural defects. In accordance with the Administrative Procedure Code

the accused may be given the opportunity to acquaint himself with the contents of the file and may do so until a decision is

issued

proposals and communicate its opinion to the administrative authority. The accused exercised her right to inspect the file of the

day

On February 13, 2018, when her deputy arrived and obtained a copy of the file on her mobile phone.

Subsequently, by letter of 20 February 2018, she also exercised her right to comment on the matter. Especially he has to go

on

be accused to be able to comment on all the grounds for the decision before his

by issuance pursuant to Section 36 Paragraph 3 of the Administrative Procedure Code. This provision thus, in principle,

provides the administrative

the obligation to inform the accused after gathering all the documents and to allow her to do so
get acquainted with the documents and comment in a reasonable time. This is the administrative body of the first instance
properly
made by communication ref. UOOU-12027 / 17-12 of 27 February 2018, when he informed the accused
on the collection of all documents and stated that the decision will follow after March 26, 2018.
Following the statement, the accused exercised her right to inspect the file on 6 March 2018.
The contested decision was issued on 27 March 2018. A period of one month is thus possible
considered to be entirely proportionate and sufficient in the present case. All
the documents on which the first-instance administrative body based its decision-making were and are
part of the file, the contents of which the accused had demonstrably had the opportunity to acquaint himself with, as well as
she was given the opportunity to comment on the case and the administrative body of first instance took a decision
duly dealt with the individual views expressed in the statement. On March 27, 2018, approx
1 hour before the written execution of the decision, the accused submitted further statements,

in which, however, it merely reiterated the views expressed in its observations of 20 February 2018 and on
she referred to that statement.
Obligation of the administrative body that he should send the draft before the accused decides
statement and the reasons for the decision, it is not possible under any applicable legislation or other
sources of the right to import, just as there is no obligation on the administrative authority to answer
how it decides or evaluates individual facts. The appellate body considers such an opinion
considered absurd and does not find any claim in the procedure of the administrative body of the first instance
illegality.
Furthermore, the Appellate Body dealt with the alleged interference of the Office with freedom and law pursuant to Article 17 of
the LZPS.
According to Article 17 (4) of the LZPS, freedom of expression and the right to seek and disseminate information
to the extent necessary by law to protect the rights and freedoms of others. Protection

personal data and the right to informational self-determination is explicitly recognized in Article 10 (3) of the LZPS and at the same time is an integral part of the right to privacy under Article 10 (2) of the LZPS (similarly to Article 8 European Convention for the Protection of Human Rights and Fundamental Freedoms). It thus represents a fully legitimate one

the limit of freedom of expression and the right to seek and impart information. First of all, this is a must

to forward that the accused appears to be based on the erroneous thesis that the legislation on personal data protection it only doubles the ex post protection of the personality under the Civil Code. Existence of legislation

personal data protection, on the other hand, primarily pursues the purpose of preventing possible misuse

personal data and, to this end, lays down a number of principles for the processing of personal data. That's the way it is

on the protection of personal data, which applies in principle independently of

private law protection, and while civil proceedings, resp. private law claims are governed

principle vigilantibus iura scripta sunt, the Office as the supervisory authority for personal protection

data is required to act ex officio. Because the legislature attaches

protection of personal data in the context of privacy, defines this category and recognizes

special public protection. However, this only applies to data qualified as personal

data in the sense of Act No. 101/2000 Coll. and, moreover, the information must be in processable form,

that is, in a form which allows operations to be carried out systematically in the sense of personal processing

data according to Act No. 101/2000 Coll. It is not even possible to mix legal licenses according to the civil

of the Code and legal titles pursuant to Act No. 101/2000 Coll.

The principle of ultima ratio, resp. subsidiarity of criminal repression, expresses the fact that the subject

Criminal repression should be only the most binding acts. It is true that the principle applies in a similar way

also within the framework of administrative punishment, however, the Supreme Administrative Court in the judgment no. 2 As 304 / 2017-42

states that, in this connection, account must be taken of the fact that administrative law, unlike law,

criminal punishes less socially harmful conduct. Even with reference to this judgment is possible

to state that the offense according to § 45 par. e) of Act No. 101/2000 Coll. is not bound to

proposal of the person concerned or a higher degree of his / her concern, and therefore the activity of the Office cannot be conditioned
by lodging a complaint with the person concerned or by exhausting an action for the protection of personality.
The appellate body further dealt with the issue of the processing of personal data in the specific
proportionality between the constitutionally guaranteed rights concerned. Processing
personal data, resp. interference with the right to informational self-determination under Article 10 (3) of the
only for a legitimate purpose and must be further processed for that purpose
only the necessary data and to the extent necessary. The very purpose of informing the public
on issues of general interest, including information on crime and related public interest
court proceedings can also be described as with regard to the activities of the accused as a mass media operator
legitimate. As well as the disclosure of information, including that of a personal nature

data can be used for this. At the same time, however, necessity and proportionality must be taken into account
such interference with other constitutionally guaranteed rights, including the right to information
self-determination. The administrative body of the first instance in this regard stated that in this case, according to his
In this opinion, the interest in the protection of privacy under Article 10 of the LZPS prevails over the right under Article 17 of the LZPS,
given the nature of sensitive data. He further stated that the data subject was a person
as a witness and victim in criminal proceedings, and last but not least, he referred to the opinion
Of the Supreme Administrative Court expressed in the judgment no. 6 As 144 / 2013-34, where the court ruled
on the issue of disclosure of information on
and states that it is information
threatening high stigma, social exclusion and arouses strong emotions in the public, namely
regardless of whether such information is true. It is not so true that the administrative body
first instance inferred the unwarranted invasion of privacy solely from itself
the nature of the data, as claimed by the accused. At the same time the administrative body of the first instance by a statement

This view sufficiently dealt with the accused's view that the public interest
the publication of the sensitive data in question consisted in the possibility for viewers to form their own opinion
to the criminal case discussed in the report, as it is clear from the above that the administrative
the first instance authority does not see this in the public interest and has rejected it. In the appellant 's view
authority, the purpose of providing information on criminal proceedings to the public could be achieved without
the assignment of sensitive data to the witness and the injured party in the proceedings, as this assignment only increased
the audience's attractiveness of the report and did not significantly increase its information
value, while intensely affecting the privacy of the data subject. The appellate body does so
in this regard, fully agrees with the opinion of the first instance administration and adds that
the public interest cannot be a mere interest to the public, but must be seen more narrowly
importance - information should be needed for public life, usable for shaping
political views and for the perception and assessment of the activities of state bodies, politicians and others
public life of influential officials (see Supreme Administrative Court judgment
Ref. 2 As 304 / 2017-42). However, the public interest presented by the accused is completely general, vague
and basically boundless, which must be rejected.
As for the argumentation by the right to publish sensitive data pursuant to the provisions of § 9 letter G)
Act No. 101/2000 Coll., as it was data that the data subject himself within the public principal
he published the trial himself, nor is this opinion correct. First of all, it should be noted that for the published data
data that are accessible to anyone can be considered for a relatively permanent period,
resp. not pre-bounded. Although the verdict is always public and the main trial
as a rule, also data that are made available only once, whether at the time of the court order
judgment, in court proceedings or on any other occasion when the law provides the public
presupposes, moreover, only a limited number of persons who appear at the trial,
they cannot simply obtain the status of published personal data. In addition, a distinction needs to be made
the right of access to information and the transparency of court proceedings. As the administrative correctly stated
authority of the first instance in the contested decision, the person has a witness in criminal proceedings

set obligations that also affect what information about your person is required in the negotiations
in court. However, it cannot in any case be inferred from the fulfillment of these legal obligations that
that the purpose of witnessing this information to law enforcement authorities should be
enabling their free processing in the sense of § 9 letter g) of Act No. 101/2000 Coll. As far as
the absence of an explicit requirement of public interest in § 9 letter g) of Act No. 101/2000 Coll., this
the objection is not possible because, as stated above, the legal title is not mentioned
applicable. In addition, however, in general, no provision can be read in isolation.
The public interest requirement clearly follows from the very nature of any processing
personal data necessarily involves operations with information of a personal nature and thus
constitutionally guaranteed right to personal data protection and information self-determination. Further is

this requirement is also implemented in the provision of Section 10 of Act No. 101/2000 Coll., according to which it may not
the data subject shall be harmed by his or her rights and shall not be subject to the processing of his or her data
unduly interfered with private and personal life.
It can be concluded that although the assessment of the lawfulness of the processing of personal data
in connection with journalistic activity, its specificity must be taken into account and not every violation can be
liters of the law to be considered socially harmful conduct fulfilling the characteristics of a misdemeanor, in any way
In this case, it is not permissible to disregard a possible restriction on freedom of expression and the right to search
and dissemination of information under Article 17 (4) of the LZPS and resign to the protection of personal data and in general
privacy enshrined in particular in Article 10 of the LZPS. In view of the above in that
In this case, the interest in protecting the privacy of the data subject prevails.
As for the accused, the doubts presented about the proper viewing of the report in question
administrative authority of the first instance, it is clear that the administrative authority of the first instance had to
to do. The record of the part of the report in which the sensitive data in question was published is
part of the contents of the file and the administrative authority of the first instance in a number of places of the decision from
the record

he literally quotes.

Finally, the appellate body dealt with the objection of social (un) harmfulness of conduct and increase seriousness of the allegedly high stigma of the data subject, with the administrative authority of the first instance should not at all examine the personal circumstances of the data subject and whether, in a particular case, stigma has actually taken place. In this context, reference may be made in particular to the above conclusions and the fact that there is no need to examine whether social harm is needed to assess it exclusion has indeed taken place, but the very high degree of risk posed by this is harmful. In that In this context, the administrative body of the first instance correctly referred to the opinion of the Supreme Administrative Court expressed in the judgment no. 6 As 144 / 2013-34, which is even in this case fully fitting and impossible find no reason to deviate. In addition, it should be emphasized that this was not an intervention to the rights of, for example, convicted persons, but, on the contrary, persons who acted as victims in the proceedings person and witness, and the data were sensitive.

In summary, the Appellate Body rejected the defendant's arguments and, after an overall examination did not find the contested decision illegal or incorrect, nor did it find any errors in the procedure which preceded the adoption of this Decision.

On the basis of all the above, the Appellate Body ruled as indicated 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, June 12, 2018

For correctness of execution:

official stamp imprint

JUDr. Ivana Janů, v. R.

chairwoman